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THE NATIONAL HISTORIC PRESERVATION ACT

AND

THE NATIONAL PARK SERVICE

A HISTORY

by

Barry Mackintosh

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History Division
National Park Service
Department of the Interior
Washington, D.C.

1986

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PREFACE

The 20 years after World War II witnessed unprecedented transformation of the American environment. Economic depression followed by war had subdued and then diverted the nation's energies; relative peace and prosperity unleashed them upon the landscape. In the words of Jerry L. Rogers, "America was on a public-funded development binge":

> Interstate highways were plowing through where land could be bought for less, usually older neighborhoods and parklands. Using urban renewal funds, cities were busily leveling the buildings and districts that distinguished them from all other cities, assembling lands into larger parcels, and urging developers to put up redundant and undistinguished new buildings. River and harbor improvements and water impoundments destroyed or inundated countless archeological sites, rescuing data from a haphazardly selected few. The tax code of the United States encouraged the destruction of historic buildings by rewarding the construction of new ones on their sites....[1]

This destruction produced the inevitable reaction. Representatives from a range of bodies involved with or sympathetic to historic preservation began to discuss ways of seeing that historic features obtained some recognition in public project planning.

In September 1963 the National Trust for Historic Preservation and Colonial Williamsburg staged an international seminar at Williamsburg that had been proposed by Ronald F. Lee, National Park Service regional director and secretary of the National Trust's board of trustees. A resulting statement called for a national inventory of historic properties and machinery for considering their protection. In November 1964 a

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[1]"National Historic Preservation Act--A Retrospective," CRM Bulletin, February 1986, p. 1.

presidential task force on the preservation of natural beauty repeated these recommendations and advocated federal loans and matching grants to state and local governments for preservation, tax deductions for preservation expenses, and a $2,000,000 annual appropriation to the National Trust to be matched by private donations. President Lyndon B. Johnson endorsed the general position of the task force in a subsequent message to the Congress:

> In almost every part of the country citizens are rallying to save landmarks of beauty and history. The Government must also do its share to assist these local efforts which have an important national purpose. We will encourage and support the National Trust for Historic Preservation.... I shall propose legislation to authorize supplementary grants to help local authorities acquire, develop, and manage private properties for such purposes.[2]

Of particular consequence was the Special Committee on Historic Preservation sponsored by the United States Conference of Mayors with Ford Foundation support, formed in the summer of 1965. It was chaired by Albert Rains, a former Alabama congressman and chairman of the House housing subcommittee, and included selected members of Congress and the Cabinet. The National Trust and National Park Service were represented on the committee, with the Trust supplying its staff. The committee studied preservation in America and Europe and published its findings and recommendations in a book, With Heritage So Rich, early in 1966.

This report called for a "new preservation" integrated with rather than isolated from contemporary life:

> If the preservation movement is to be successful...it must go beyond saving occasional historic houses and opening museums. It must be more than a cult of antiquarians. It must do more than revere a few precious national shrines. It must attempt to give

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[2]"Natural Beauty of Our Country," H. Doc. 78, 89th Congress, Feb. 8, 1965.

a sense of orientation to our society, using structures and objects of the past to establish values of time and place....

[T]he new preservation must look beyond the individual building and individual landmark and concern itself with the historic and architecturally valued areas and districts which contain a special meaning for the community....

In sum, if we wish to have a future with greater meaning, we must concern ourselves not only with the historic highlights, but we must be concerned with the total heritage of the nation and all that is worth preserving from our past as a living part of the present.[3]

The committee recommended a comprehensive "National Register" administered by the Park Service and developed from federal and state historic property surveys, the latter assisted by federal grants; an Advisory Council on Historic Preservation broadly representing governmental and private interests, its concerns to include the review and resolution of conflicts between federal programs affecting preservation; Internal Revenue Code amendments favoring preservation; requirements for identifying and considering historic properties in advance of federal and federally aided projects; federal matching grants and loans for public acquisition, rehabilitation, and restoration of historic structures; new loan programs for acquisition and rehabilitation by private parties; and a scholarship and training program for architects and technicians in historic preservation. Other recommendations addressed grants to the National Trust and actions that could be taken by state and local governments.

In March 1966 Secretary of the Interior Stewart L. Udall sent a bill to Congress incorporating many of the Special Committee's proposals. Sen. Henry M. Jackson of Washington and Rep. Wayne N. Aspinall of Colorado, chairmen of the Senate and House Interior and Insular Affairs committees, promptly introduced the legislation. Sen. Edmund S. Muskie of Maine and

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[3]With Heritage So Rich (New York: Random House, 1966), pp. 207-08.

Rep. William B. Widnall of New Jersey, both members of the Special Committee, sponsored similar bills. Following committee hearings and amendments, the House and Senate passed a measure pleasing most interested parties. President Johnson signed it into law on October 15.[4]

The preamble to the National Historic Preservation Act affirmed the "new preservation" articulated in With Heritage So Rich, declaring "that the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people." The act authorized the Secretary of the Interior--in practice, the National Park Service--to "expand and maintain a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture" and to dispense matching grants-in-aid to the states for historical surveys, preservation plans, and the acquisition and development of historic properties. Matching grants were also authorized to support the National Trust in carrying out its responsibilities. In specific response to the destruction wrought by federal projects, Section 106 of the act ordered federal agencies to consider the effects of their undertakings on National Register properties and permit the Advisory Council on Historic Preservation established by the act to comment on such undertakings.

The passage of two decades affords opportunity for historical perspective on the 1966 act and its consequences. Ernest Allen Connally,

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[4]The National Historic Preservation Act was one of a trilogy of laws, with the Department of Transportation Act and the Demonstration Cities Act, that earned the 89th Congress the sobriquet "The Preservation Congress."

a foremost player in implementing its provisions, published a lucid summary of the events leading to its enactment in the February and April 1986 issues of the Park Service's CRM Bulletin. James M. (Mike) Lambe's Legislative History of Historic Preservation Act of 1966 traces the progress of the legislation through Congress; it is no less valuable today for having been compiled in 1967. A dissertation in progress by James A. Glass, a doctoral student at Cornell, promises to be the definitive work on the national preservation program resulting from the act.

In view of these and other contributions to the historical record, the present work is distinctly limited in scope. Essentially, it is concerned with key decisions and directions taken by the National Park Service in implementing the 1966 act and successive amendments to it. It does not address the Advisory Council after its Service ties were severed in 1976, therefore, nor other preservation-related legislation in the past 20 years beyond the tax provisions that so heavily influenced the programs under the act. It gives short shrift to both the operational details of these programs and their major accomplishments. For the comprehensive treatment that the broad topic warrants, we must await the Glass dissertation and the book expected from it.

Many people assisted in the preparation of this account, a few of whom deserve special mention. Ernest Connally and Jerry Rogers opened their files and were especially generous with their time in interviews. Robert M. Utley shipped his personal collection of relevant documents from Santa Fe to Washington for use in the research and responded patiently to numerous telephone inquiries. Robert R. Garvey, Jr., and William J.

Murtagh contributed recollections from the pivotal roles they played in implementing the act. Stephen D. Newman provided papers and fielded questions on the grants program. And Beth M. Grosvenor of the National Register staff made available the many records she has carefully preserved throughout successive office reorganizations and moves. As usual in assignments of this kind, consulting with and learning from such people was the most rewarding aspect of the research.

Barry Mackintosh
August 1986

GETTING (RE)ORGANIZED

When President Lyndon B. Johnson signed the National Historic Preservation Act on October 15, 1966, planning for its implementation was already underway within the National Park Service. That May Director George B. Hartzog, Jr., had appointed a special committee on historic preservation to consider both the bureau's existing preservation responsibilities--mostly within the National Park System--and its anticipated responsibilities beyond the parks under the pending legislation. The distinguished committee comprised Dr. John Otis Brew, a prominent archeologist and director of Harvard's Peabody Museum, who had served on the Secretary of the Interior's national parks advisory board; Dr. Ernest Allen Connally, professor of architectural history at the University of Illinois, who had participated in several Historic American Buildings Survey and historic structure restoration projects for the Service; and Ronald F. Lee, a former National Park Service chief historian and regional director and then special assistant to Hartzog, who had been instrumental in founding the National Trust for Historic Preservation.

Historic preservation had been a major activity of the Park Service since the 1930s, when it acquired most of the government's historical parks and monuments in a 1933 executive branch reorganization. The Historic Sites Act of 1935 charged it with implementing "a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States." Ever since the reorganization most units of the

Park System had been historical or archeological. Yet the great natural parks--the Yellowstones and Yosemites--still predominated in the public image of the System and in the minds and hearts of Service management.

This traditional bias, the committee perceived, was detrimental to historic preservation in the inevitable competition for funding, personnel, and management attention within the organization. During consideration of the Historic Sites Act legislation, some had foreseen the problem and advocated a separate historic sites agency. In his 1935 report on the expanded program envisioned by the act, J. Thomas Schneider implicitly favored this course, but since the act specified the National Park Service, Schneider fell back to urging an autonomous historic sites branch within the Service.[1] Such a branch was created, but it lacked the recommended autonomy and did not survive successive bureau reorganizations.

Reporting to Director Hartzog in September 1966 as the new legislation was en route to enactment, the Brew-Connally-Lee committee echoed Schneider's concern about the subordination of historic preservation in the Park Service. "We are deeply aware that in most European nations... the preservation of historic and architectural monuments is the special responsibility of a separate bureau or department created solely for this purpose," it wrote. "We sense that within the Government of the United States, and specifically within the National Park Service, there is a need to bring professional preservation work into sharp focus, and to conduct it at a very high level."[2]

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[1]Report to the Secretary of the Interior on the Preservation of Historic Sites and Buildings (Washington: U.S. Department of the Interior, 1935), pp. 154-56.

[2]"Report of Special Committee on Historic Preservation," Sept. 30, 1966, p. 2.

The committee went on to specific complaints:

> The professional staffs in history, archeology, and historical architecture are now subdivided, and in our view, fragmented, under four of the six Assistant Directors. These fragmented staffs function at a regrettably low level in the Service organization. This... makes communication of staff professional viewpoints within the Service, and outside the Service, both difficult and often ineffective.

As a result of this fragmentation, the committee felt, historic restoration work in the parks sometimes suffered.[3]

The committee's prescription for the problem was an "Office of Archeology and Historic Preservation" whose chief would report directly to the director. The office would consolidate the Service's top-level historians, archeologists, and historical architects, although some would retain their duty stations in the regional offices, archeological centers, and three existing planning and service centers. The committee recommended that the office be headed by a historical architect, "partly because we foresee rapidly increasing national need for experts who have specialized in historic buildings, and also because this side of Service professional work is most in need of further strengthening and development."[4]

Hartzog adopted in large measure the committee's recommendations. Early in 1967 the Office of Archeology and Historic Preservation--quickly dubbed OAHP--was formed in the Service's Washington headquarters. Ernest Connally, trained as an architect as well as an architectural historian, accepted Hartzog's offer to head it.[5] With his university background,

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[3]Ibid., p. 7.

[4]Ibid., pp. 10-11.

[5]Connally could not leave his academic post to report for duty until June 1967; meanwhile he communicated regularly on office matters with Robert M. Utley, who acted as chief in the interim.

Connally sought to organize and staff OAHP in a manner that would gain it academic respectability and professional standing equivalent to the foreign government offices charged with similar responsibilities. He envisioned it as "a kind of scholarly institute" benefiting from frequent personnel exchanges with academic departments in related fields.[6]

In line with these objectives, the disciplines of archeology, history, and historic architecture formed the primary divisions of the office. Chief Historian Robert M. Utley, who had risen through the Service organization and combined professional and bureaucratic skills to an uncommon degree, was chief of the Division of History. Under him were the Branch of Park History Studies, which conducted research for preservation and interpretation within the National Park System, and the Branch of Historical Surveys, which studied properties outside the System for designation as national historic landmarks. The Division of Archeology was headed by Dr. John M. Corbett, another Service veteran, who supervised a Washington staff, archeologists stationed in several of the regional offices, and the Southeast and Southwest archeological centers. Whereas these divisions predated OAHP in the Washington headquarters organization, the Division of Historic Architecture was a new amalgamation of functions and staff. It comprised the Branch of Restorations, which planned and supervised Park System projects, and the Historic American Buildings Survey (HABS), whose recording work transcended the System. Joseph Watterson, a newcomer to the Service, was appointed chief of the division in November.

Most of the duties and many of the personnel of these disciplinary

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[6] Interview with Connally, Apr. 21, 1986.

divisions had been with the Service for years. In contrast, the National Register branch was an innovation stemming directly from the National Historic Preservation Act. It would carry out the act's directive "to expand and maintain a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture." It was also charged with establishing and administering the new program of grants-in-aid to the states and National Trust for Historic Preservation authorized by the act.

The Register unit, which did not become a "division" until 1972, was headed by Dr. William J. Murtagh, an architectural historian who had been director of program with the National Trust. Murtagh was styled "Keeper of the National Register" rather than registrar, because Ernest Connally foresaw that the states would ultimately be doing most of the registering and that OAHP would be merely "keeping" the register.[7] The first National Register employee was Russell V. Keune, an architect from HABS, who acted as keeper until Murtagh's arrival in August and remained as assistant keeper until departing for the National Trust in January 1969. Next came Jerry L. Rogers, a newly hired historian who arrived the same day as Connally in June, succeeded Keune as assistant keeper, became chief of the new Division of Grants in October 1973 when that function separated from the National Register Division, rose to head OAHP in 1976, and after 1983 oversaw the historic preservation responsibilities of the National Park Service as its associate director for cultural resources.

Another unit responding directly to the 1966 act constituted staff to the Advisory Council on Historic Preservation established by the act,

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[7]Interview with Jerry L. Rogers, Feb. 5, 1986. Bob Utley coined the title.

which specified the director of the National Park Service or his designee as executive director of the Council. Robert R. Garvey, Jr., who had worked actively for the legislation as executive director of the National Trust, left that post in July 1967 to assume the full-time staff responsibility of executive secretary to the Council. Although Garvey did not remain within OAHP officially after 1969, his office was housed with OAHP until 1973, and like the National Register unit it drew heavily on the resources of the established disciplinary divisions. After Council review of a controversial Park Service undertaking--permitting access to a privately built tower next to Gettysburg National Military Park--raised conflict of interest questions, Director Ronald H. Walker (Hartzog's successor) delegated his executive directorship to Garvey in 1973 in an effort to give the Council staff a greater measure of autonomy within the Service. The potential for conflict remained until 1976, when legislation amending the National Historic Preservation Act reconstituted the Council as an independent federal agency to which Garvey and his staff were transferred.[8]

A January 1968 report on the first year's progress in implementing the act restated the prospect of OAHP becoming "an American equivalent of the 'monuments offices' that European and Latin American countries have long maintained to guard the national patrimony."[9] Achieving this goal would have required an accretion of preservation responsibility, including line authority over the cultural areas and resources of the National Park

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[8]P.L. 94-422, Sept. 28, 1976.

[9]"The National Historic Preservation Program: Report of the Director of the National Park Service to the Secretary of the Interior on Progress during 1967," National Register files. The report was prepared by Bob Utley.

System. Instead, OAHP became less comprehensive as some of its initial responsibilities were withdrawn in successive Service reorganizations.

The separation of the Advisory Council support function has been noted. The first removal of traditional Service responsibilities placed under OAHP came in early 1970, when park-related historical and architectural research and restoration project supervision were reassigned to the Eastern and Western service centers (combined as the Denver Service Center in the fall of 1971) and when the Southeast and Southwest archeological centers were placed under the respective regional offices. Several factors motivated the transfers. Under pressure to reduce Washington overhead, management needed to show fewer people assigned to the headquarters office. There was hope for improved collaboration among the historians and historical architects and the planners and other professionals in the service centers. Finally, Director Hartzog seemed concerned that OAHP might amass too much power and break away, with or without the historical parks--perhaps to the rival Smithsonian Institution.[10] Hartzog supported historic preservation, but his primary devotion was to the integrity and expansion of his bureau, and the implications of the "monuments office" concept did not arouse his enthusiasm.

In 1971 OAHP moved down a notch in the Service organization: Ernest Connally now reported to an associate director for professional services instead of the director. The following year Connally became the associate director for professional services and Bob Utley was elevated to head OAHP, so the proximity of preservation to the director was restored in fact if not name.

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[10]Telephone interview with Robert M. Utley, Apr. 21, 1986.

Soon after the last reshuffle, the Conservation Foundation published National Parks for the Future to coincide with the centennial of Yellowstone National Park's establishment in 1872. Arguing that the natural and historical parks would both be better served by separate administration, the report called for divesting the latter from the Service. Predictably, Hartzog opposed this recommendation; but he was fired at the end of 1972 and replaced by Ronald Walker, an advance man from the Nixon White House who did not share Hartzog's instinctive aversion to narrowing the bureau's scope.

Walker formed a committee of Service managers to recommend further organizational changes. Their report proposed that OAHP be dismantled. It reflected the widespread lack of sympathy for the office's non-park activities among those who had risen through the traditional park ranger and administrative ranks ("smoky bears" to Connally), as well as animosity toward its perceived elitism, academic pretensions, and separatist tendencies. Connally and Utley persuaded Walker to reject most of the committee's recommendations for OAHP and to adopt an alternate scheme, effected in September 1973.

OAHP was pared down to those programs that were basically external to the National Park System. It consisted of the National Register Division under Bill Murtagh, the Grants Division under Jerry Rogers, the Historical and Architectural Surveys Division (the Historic American Buildings Survey, Historic American Engineering Record, and National Historic Landmarks Program) under Cornelius W. Heine, and the Interagency Services Division for archeology under Rex Wilson. In charge as assistant director for OAHP was Dr. A. Russell Mortensen, a former University of Utah history professor who had succeeded Bob Utley as chief historian. What

remained of the history, archeology, and historic architecture divisions (under Dr. Harry W. Pfanz, Dr. Robert H. Lister, and Henry A. Judd respectively) was placed under Bob Utley, who became assistant director for park historic preservation.

This segregation of "in-house" and "out-house" preservation responsibility was in part a response to the criticism that park needs had been subordinated within the former organization. The assistant directorate for park historic preservation was announced as a corrective to that drift. Not announced was Connally's and Utley's other agenda for the reorganization: an OAHP divested of its Park System functions would be easier to remove from the Park Service to more sympathetic custody.[11]

Connally's grand design was outlined in a paper he and Walker presented to Walker's boss, Assistant Secretary of the Interior Nathaniel P. Reed, on October 31. It noted that cultural responsibilities in the federal government were dispersed inefficiently among the Smithsonian, the arts and humanities endowments, and the Park Service. Historic preservation was a peripheral concern in the Interior Department, and it would be even more so in the Department of Energy and Natural Resources that the Nixon Administration was planning to supersede Interior. Connally's ultimate solution was a new independent agency, an Administration of Cultural Affairs, that would encompass both OAHP and the Service's historical parks along with the Smithsonian, the endowments, the National Archives, and performing arts administration. As an intermediate step, he proposed that OAHP be transferred (with its 98 positions and $15 million

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[11]Memorandum, Director Ronald H. Walker to Regional Directors, "Historic Preservation," Dec. 18, 1973, History Division files; Utley interview.

budget) from the Service to the departmental level.[12]

Reed had previously come out against the Conservation Foundation recommendation for the historical parks, and he refused to endorse either the grand design or the OAHP transfer. Realizing that Interior's top officials were unlikely to favor anything aimed at removing responsibility from the department, Connally gained Walker's support for a more modest proposal in August 1974. It would place the historical parks and OAHP in a separate Historic Sites and Monuments Service under Reed's assistant secretariat. Walker's memorandum with this proposal (prepared by Connally) cited the differences between historical and natural park management and the greatly increased extramural responsibilities of OAHP as justification for the new bureau. But Reed again thwarted the separation.[13]

When Walker was replaced by Gary Everhardt, a Park Service careerist, in January 1975, there was no further prospect of advancing such proposals through the bureau's leadership. Rather than seeking to reconcile OAHP and its outside constituency to its Service tie, however, the Everhardt administration seemed bent on proving that the preservation program beyond the parks could not prosper in a park management organization. When the water system at Crater Lake National Park broke down, Everhardt slashed OAHP's fiscal 1977 grants-in-aid budget request in half (from $20 million to $10 million) for the money to repair it. Connally denounced this action at the 1976 spring meeting of state historic preservation officers, winning their applause but incurring Everhardt's

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[12]"Historic Preservation: A Brief Analysis and Preliminary Proposal," Oct. 31, 1975, Ernest A. Connally office files.

[13]Memorandum, Walker through Reed to Secretary of the Interior Rogers C. B. Morton, "Historic Sites and Monuments Service, Department of the Interior--A Proposal," Sept. 30, 1974, Connally files; Utley interview.

and Reed's displeasure.

The state representatives now spoke out for divorcing OAHP, if not the historical parks, from the Service. After the meeting Truett Latimer of Texas, president of the National Conference of State Historic Preservation Officers, wrote Sen. Henry M. Jackson of Washington, chairman of the Senate Interior and Insular Affairs Committee:

> When a choice must be made between identifying, preserving, and protecting historic resources across the country and upgrading park sanitation systems, it is time for the two to be separated. The majority of SHPOs who have expressed opinions on this issue favor the creation of a "Bureau of Historic Preservation" within the Department of the Interior, with organizational status equal to that of other Departmental bureaus.[14]

Chairman Carlisle H. Humelsine and President James Biddle of the National Trust for Historic Preservation signed another letter to Jackson on the subject:

> [W]e have recently suggested to the Assistant Secretary of Interior for Fish and Wildlife and Parks [Reed]..., in view of the disastrous consequences to historic preservation reflected in the President's 1977 budget request, flowing from its competition for funding available for other worthy National Park Service undertakings, that it is timely to consider transfer of historic preservation responsibilities from the National Park Service to an organizational entity reporting directly to the Departmental Secretary level....
>
> Alternatively, and perhaps even preferably, we believe that serious consideration should be given to action by the Congress to divest, entirely, from the Department of the Interior, responsibility for carrying out the national historic preservation policy, reassigning that responsibility to a Federal entity where the primary thrust is in the direction of achieving compatible goals. We believe that such an entity exists in the National Foundation for the Arts and Humanities....[15]

Another Service reorganization just afterward, in May 1976, removed Bob Utley's assistant directorate for park historic preservation from

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[14]Letter, Latimer to Jackson, April 1976, Connally files.

[15]Letter, Humelsine and Biddle to Jackson, Apr. 13, 1976, Connally files.

Connally and reduced it with its three disciplinary divisions to a single Cultural Resources Management Division, under the assistant director for park operations and associate director for management and operations. Connally, retitled Associate Director, Preservation of Historic Properties, and retaining only OAHP, was left isolated from Park System concerns. The progressive retreat from the original concept of OAHP as a central unit consolidating the bureau's preservation professionals was complete.

The change of administrations in January 1977 raised the hopes of many in the preservation community that OAHP and its programs might at last be liberated from Park Service shackles. The following month Rep. John F. Seiberling of Ohio, chairman of the public lands subcommittee of the House Interior and Insular Affairs Committee, introduced a bill titled "The National Historic Preservation Policy Act of 1977."[16] Drafted in collaboration with the newly independent Advisory Council on Historic Preservation, the bill would transfer OAHP's functions to the Council.

Bob Utley, who had come to the Council as deputy executive director after his descent in the last Service reorganization, helped prepare a staff paper supporting the transfer. It traced the fate of the preservation program in the Service and catalogued the disadvantages of leaving it there: "Past record with the program, including deficiencies in management of historic resources of the National Park System, subordination of historic preservation budget and personnel needs to other priorities, delays in issuance of needed regulations caused in part by perceived inconvenience to Interior land managers, lack of interest in or understanding of historic preservation by key management officials, continuing

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[16]H.R. 3602, 95th Congress, Feb. 16, 1977; superseded by identical H.R. 6163, Apr. 6, 1977, with 24 cosponsors.

inability after forty years to adopt original principles urged by historic preservation specialists."[16]

In April Council staff met at Williamsburg with representatives of the National Conference of State Historic Preservation Officers, the National Trust, and the Defense, Treasury, and Transportation departments to consolidate support for the Seiberling bill. The group's report, favoring the bill, was adopted by the full Council in May. Interior was asked but declined to participate in the Williamsburg meeting, and Director Everhardt persuaded the Secretary of the Interior's Advisory Board on National Parks, Historic Sites, Buildings, and Monuments to strongly oppose divestiture of the OAHP programs.[17]

The progress of the Seiberling bill was overtaken by other events. Following President Jimmy Carter's environmental message to the Congress in May, Secretary of the Interior Cecil D. Andrus appointed a National Heritage Trust Task Force to consider the preservation of natural and cultural resources and the provision of recreational opportunities. The 100-member group, representing some 50 public agencies and private organizations concerned with these matters, labored throughout the summer to define problems and propose solutions, including organizational realignments. But the outcome reflected the influence of Interior's Bureau of Outdoor Recreation under its Carter-appointed director, Chris T. Delaporte, more than the input of most other interests.[18]

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[16]"Staff Paper on Federal Historic Preservation Programs," March 1977.

[17]Everhardt remarks before Advisory Board, Apr. 18, 1977, and memorandum, Linden C. Pettys to Secretary of the Interior, Apr. 20, 1977, Connally files.

[18]Rogers interview.

On January 25, 1978, Secretary of the Interior Cecil D. Andrus ordered reconstitution of the Bureau of Outdoor Recreation as the Heritage Conservation and Recreation Service. HCRS would be "the focal point within the Federal government for planning, evaluating, and coordinating the protection and preservation of the Nation's cultural and natural heritage, and for assuring adequate recreation opportunities for all its people."[19] The order transferred both OAHP and the Park Service's Natural Landmarks Program to the new bureau. Ernest Connally retained his associate directorship in the move, Jerry Rogers remained under him as OAHP chief, and subordinate personnel kept their positions as well.

Historic preservationists who had looked for better times ahead were soon disillusioned by the new regime. HCRS, dominated by the outdoor recreation interests of its predecessor, seemed no more hospitable to the concerns of OAHP than the Park Service had been. A month after its establishment Bruce K. Chapman, a National Trust trustee and Advisory Council member, attacked OAHP's shift to HCRS in a Washington Post column:

> This will create an organizational mishmash, reminiscent of comedian Shelley Berman's old skit about the "Grace L. Ferguson Non-Scheduled Airline and Storm Door Company."
>
> Worse, it suggests little comprehension of the new concept of preservation as an urban activity.
>
> While disappointing historic preservationists, the new plan is not likely to satisfy those who are primarily concerned with saving endangered natural areas. They, too, expected more innovation from the five-month-long policy review that followed the president's environmental message last May.
>
> I think President Carter is missing a major opportunity. Instead of consigning historic preservation to an inappropriate niche, he should make it the core of his forthcoming urban policy....[20]

As HCRS director, Chris Delaporte seemed unresponsive and even

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[19]Order No. 3017, "Establishment of a Heritage Conservation and Recreation Service," Jan. 25, 1978.

[20]"A Better Way to Save Our Cities" (op-ed column), Feb. 28, 1978.

hostile on occasion to his preservation constituency. After the president of the National Conference of State Historic Preservation Officers questioned the legality of HCRS under the secretarial order and urged that it be disbanded, Delaporte announced in mid-1979 that grants funds could no longer be used for dues to the organization.[21] The decision may have been correct, but its timing suggested retaliation. Simultaneously, Delaporte proceeded with plans to relocate much OAHP business to the bureau's eight regional offices by transferring positions and personnel from Washington. This was part of an overall scheme under which basic program operations would be delegated to the states as much as possible, the regional offices would perform essential federal operations and provide guidance, and the Washington office would be trimmed to a policy, budgeting, and evaluation center. But regionalization met resistance inside and outside the organization: program leaders foresaw that staff would be spread too thinly if dispersed without augmentation, while state historic preservation officers disliked having to deal with another bureaucratic layer.[22]

Matters were not helped by Delaporte's failure to develop good personal relationships with the preservation establishment in and outside his organization. Ernest Connally and Bill Murtagh found him unsympathetic to their somewhat academic management styles. Following a period of heavy pressure to reform office operations, Murtagh left the National Register to head the preservation program at Columbia University in May 1979.

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[21]Letter, Larry E. Tise to Secretary of the Interior Cecil D. Andrus, June 1, 1979, Jerry L. Rogers office files; letter, Delaporte to State Historic Preservation Officers, July 3, 1979, ibid.

[22]Memorandum, Jerry L. Rogers to OAHP Division Chiefs, Aug. 20, 1979, Rogers files; Rogers interview.

Connally stayed on the rolls but relinquished his associate directorate in November to devote himself to his other duties as secretary general of the International Council on Monuments and Sites. The departures of these widely respected leaders, generally perceived as forced, further diminished Delaporte's image beyond the bureau.

Displeased with the fate of preservation under HCRS, Representative Seiberling introduced another bill on August 2 titled "National Historic Preservation Amendments of 1979."[23] This second Seiberling bill proposed an independent Historic Preservation Agency, headed by an Administrator for Historic Preservation. The agency would assume all OAHP functions. The Advisory Council would receive new membership but would remain a separate body. The independent agency was dropped from a later version of the bill enacted as the National Historic Preservation Act Amendments of 1980.

On September 24, 1979, the Office of Archeology and Historic Preservation ceased to exist under that name. The associate director, preservation of historic properties, became the associate director, cultural programs, and the chief of OAHP became the deputy associate director. The deputy, Jerry Rogers, acted as associate director between Connally's departure and the arrival of his successor, Hope T. Moore, on January 29, 1980.

Meeting in New Orleans in September 1980, the National Conference of State Historic Preservation Officers again attacked HCRS in a statement addressed to Secretary Andrus. The SHPOs accused Interior administrators of taking a disproportionate share of their required fiscal 1981 budget

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[23]H.R. 5139, 96th Congress.

reduction from the grants program and of unduly changing the rules for state participation in the program. "[W]e can no longer in good conscience urge anyone to seek participation in the national program," they declared.[24]

Wolf Von Eckhardt, architecture critic for the Washington Post, characterized the widespread opposition to HCRS in an October article:

> Members of Congress and citizen organizations concerned with heritage and recreation seem unanimous, as one spokesman put it, that "Delaporte's outfit is an unmitigated disaster." Congressional dislike caused money cuts. Professional dislike caused resignations. "Chris," as the executive of a leading citizen organization told me, "caused nothing but chaos."[25]

The end of the Carter administration in January 1981 was also the end for the bureau. With its politically appointed leadership (including Hope Moore) out of the picture, Secretary of the Interior James G. Watt --a former director of the Bureau of Outdoor Recreation--immediately abolished HCRS and returned most of its functions to the National Park Service. Its five existing historic preservation divisions--National Register, State Plans and Grants, Interagency Archeological Services, National Architectural and Engineering Record, and Technical Preservation Services--remained together under Jerry Rogers, who received the title Associate Director, Archeology and Historic Preservation.

Two further Park Service reorganizations brought the preservation programs to their status at this writing. In 1982 Rogers was retitled Associate Director, National Register Programs; the first three divisions mentioned above were consolidated to the Interagency Resource Management Division, under Lawrence E. Aten; and the two remaining were renamed the

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[24]Statement dated Sept. 6, 1980, Connally files.

[25]"Landmark Decisions," Washington Post, Oct. 18, 1980, p. B1.

HABS/HAER Division (for Historic American Buildings Survey and Historic American Engineering Record), under Robert J. Kapsch, and the Preservation Assistance Division, under Lee H. Nelson. During the HCRS interlude the old park-related History, Historic Architecture, and Anthropology (formerly Archeology) divisions had reemerged under an assistant director for cultural resources, F. Ross Holland, Jr. Holland now became Associate Director, Cultural Resources Management.

A year later the two associate directorates were amalgamated under Jerry Rogers as Associate Director, Cultural Resources. On paper, Rogers supervised three assistant directors, only one of whom existed. This was the Assistant Director for Archeology, Bennie C. Keel, who oversaw Douglas H. Scovill's park-related Anthropology Division and Victor Carbone's Archeological Assistance Division. The other assistant director positions were not filled, so that the remaining five divisions reported directly to Rogers. These were the History Division under Edwin C. Bearss, the Park Historic Architecture Division under Hugh C. Miller, and the Interagency Resources, HABS/HAER, and Preservation Assistance divisions noted above. The organization fostered much greater interchange among the "internal" and "external" programs. In one case it combined them, returning the National Historic Landmarks Program to its erstwhile home in the History Division.

Reviewing this organizational evolution since 1967, one is struck by its circular nature. Integrating the in-park and extramural preservation activities of the National Park Service under a ranking official reporting to the director, the associate directorate for cultural resources after 1983 resembled nothing so much as the original Office of Archeology and Historic Preservation. There were differences, to be sure. The Advisory

Council support function and the park research and project supervision activities were absent. The regionalization initiated under HCRS continued under the Park Service, so that some former OAHP activities were carried out in the bureau's regional offices under its regional directors. But the organization headed by Jerry Rogers 20 years after the National Historic Preservation Act was closer to the initial OAHP concept than any previous arrangement since 1971.

After the HCRS experience, the return of its historic preservation component to the Park Service was greeted with general relief. Some preservationists, including Charles E. Lee of South Carolina, president of the National Conference of State Historic Preservation Officers in the mid-1980s, again became dissatisfied with Service custody of the non-park programs and renewed the call for separation. But the call was untimely. As program responsibilities were being shifted from the federal level to the states and localities, the federal component warranted independent agency status less rather than more. Its transfer to a less established agency or bureau (presumably one devoted to cultural programs, the alternative having been discredited) would increase rather than reduce its vulnerability to contemporary budget cutting imperatives. Although not deliberately designed to do so, the integrated organization after 1983 also militated against separation. Most veterans of the bureaucratic wars probably agreed with Jerry Rogers that the National Park Service was, for the foreseeable future, the best place for his programs.[26]

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[26]Rogers interview. In their conversations with the writer, Ernest Connally and Bob Utley shared the view that divesting the non-park programs was not a worthwhile objective in 1986.

EXPANDING THE REGISTER

The National Historic Preservation Act authorized the Secretary of the Interior "to expand and maintain a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture, hereinafter referred to as the National Register...." The National Register was at the core of the act: nearly everything else was aimed at identifying, preserving, and protecting what would be included in it. The decisions made in implementing this provision were therefore basic to the national historic preservation program over the next two decades.

Those in the National Park Service charged with further defining, expanding, and maintaining the National Register had aided or witnessed the drafting of the act's language and were familiar with the testimony of its proponents during the legislative process. From this legislative history they derived and incorporated certain axioms that were not obvious from the act alone.

The first of these was that the National Register already existed in embryonic form, consisting of the national historic landmarks designated previously. This point was of much importance to George Hartzog, who insisted on having the law "expand" rather than initiate the Register. In this way he could tie the Register to longstanding Service activity under the 1935 Historic Sites Act, which authorized the landmarks program. Doing this would limit the possibility that the Department of Housing and Urban Development or some other agency might seize the new program,

and it might enable the Service to carry out some of the program under the 1935 authority if funding were not forthcoming under the new legislation.[1]

Second, expansion of the Register was understood to cover properties of less-than-national significance. Nationally significant properties--the national historic landmarks--were included by virtue of the 1935 act. The thrust of the studies and testimony preceding the 1966 act was the need to be concerned about places of regional, state, and local significance as well. The bills introduced in March 1966 by Sen. Edmund S. Muskie of Maine and Rep. William B. Widnall of New Jersey, who had both served on the committee that produced the preservation blueprint With Heritage So Rich, explicitly described the Register as comprising this range of properties.[2] Although this breakdown was not included in the bill that was enacted, there was no question that the act's reference to properties "significant in American history, architecture, archeology, and culture" was meant to apply broadly and that its call for "comprehensive statewide historic surveys" would encompass places down to the locally significant level.

Third, although "objects" were included among the categories of properties on the Register, the Register was not intended to list small artifacts outside of their historic contexts, such as museum objects and collections. The act was primarily a response to concern about the effect of federal public works on historically significant real estate--sites and buildings. Portable objects whose significance was unrelated to their

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[1]Telephone interview with Robert M. Utley, June 11, 1986.

[2]S. 3098, H.R. 13792, 89th Congress; Special Committee on Historic Preservation, With Heritage So Rich (New York: Random House, 1966).

locations were not threatened by such activity. Testifying on a related bill before passage of the act, Gordon Gray, chairman of the National Trust for Historic Preservation, spoke of "historic places" as the object of its provisions.[3] Although it did not appear in the act, this phrase nicely captured the intended geographical basis of the Register.

In mid-1968 the Service began to refer to the "National Register of Historic Places." Office of Archeology and Historic Preservation staff adopted the suffix in preparing the first publication of the Register so that the title would signify its general content ("National Register" alone could have embraced anything).[4] Although the title was not selected deliberately to exclude objects, it did serve to reinforce the intended scope of the Register. The number of objects listed over the years has been small, and most of those included have been substantial in bulk and relatively fixed in location, like moored ships. The current Service definition of objects for Register purposes specifies that they must be "related to a specific setting or environment."[5]

In June 1966, four months before passage of the act, Bob Utley drew up an outline for implementing the expected program. The Service would immediately place in the National Register all properties eligible for national historic landmark designation and all buildings recorded by the Historic American Buildings Survey. Each state would be asked to

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[3]Gray testimony on H.R. 13790 before House Committee on Banking and Currency, Mar. 21, 1966, cited in James M. Lambe, "Legislative History of Historic Preservation Act of 1966," National Park Service, 1967, p. 29.

[4]The first use of "National Register of Historic Places" found was on a working list of July 1, 1968. The title appeared officially in the February 25, 1969, Federal Register, where the Register was first published. It was legally recognized in the 1980 amendments to the 1966 act.

[5]36 C.F.R. Pt. 60.

designate an agency responsible for conducting its statewide historical survey, preparing its historic preservation plan, and receiving grants. Utley adapted criteria for properties of state and local historical significance on the Register from the Service's existing national significance criteria. Subsequently adopted, these criteria remain in force.[6]

At this point in the legislative process, proponents fostered the notion that the state surveys would be completed in a finite time period. Testifying before the House subcommittee considering the bill on July 15, George Hartzog explained why it authorized appropriations for only three more fiscal years:

> The reason for the limitation of three years is that we were not able, and we still are not until you get this overall survey finished, to say what amount of money you need for this program. So four years from now we will be back before this committee and before the Congress seeking a broader charter for grants in response to the need that develops as a result of the survey.[7]

The Senate and House committee reports recommending passage of the legislation both repeated this expectation that expansion of the National Register via the state surveys would be completed by 1970. Ronald F. Lee was equally optimistic a month after the October 15 enactment. In a plan submitted to Hartzog he envisioned completion of the national historic landmark surveys in 1967 and the statewide surveys and preservation plans in fiscal 1970, with the results incorporated in the Register.[8]

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[6]Memorandum, Utley to Assistant Director Howard R. Stagner, June 2, 1966, enclosing "Preliminary Prospectus for Conduct of Grants-in-Aid Program Under Jackson and Aspinall Bills," Utley office files, History Division. See first National Register publication in appendix for criteria.

[7]Hartzog testimony on H.R. 13491 quoted in Lambe, "Legislative History," pp. 95-96.

[8]S. Rept. 1363, July 7, 1966; H. Rept. 1916, Aug. 30, 1966; memorandum, Lee to Hartzog, Nov. 16, 1966, attaching "Preliminary Plan for Enlargement of National Register," National Register files.

An exchange between Hartzog and the Senate Interior committee chairman, Sen. Henry M. Jackson of Washington, during the Senate hearing in June 1966 also reflected the prevailing vision of the Register as something much narrower than it would actually become. Jackson expressed concern that local desires to benefit from the grants program would cause many unqualified properties to be nominated to the Register, and he asked how state nominations would be evaluated. Hartzog replied that they would be reviewed in the same manner as national historic landmark nominations--by the Secretary of the Interior's Advisory Board on National Parks, Historic Sites, Buildings, and Monuments.[9] The advisory board comprised 11 members of varied expertise who met twice a year to consider a diversity of business, including a few dozen landmark proposals. It would have been overwhelmed by any significant volume of state Register nominations. Fortunately, Hartzog's response was forgotten when the nominations started rolling in.

Serious planning for the National Register got underway in late November with the formation of a Service task force to draft standards and procedures for implementing the act. Bob Utley was chairman; the other members were Russell Keune, architect; Zorro A. Bradley, archeologist; Murray H. Nelligan, historian; William E. Brown, historian, later replaced by John A. Hussey; and Kay Thomas, secretary. The task force convened on November 22 with the members of Hartzog's special committee on historic preservation, Ronald Lee, Ernest Connally, and J. O. Brew.

The first objective was to define the Register consistent with the act's general language encompassing "districts, sites, buildings,

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[9]Hartzog testimony on S. 3035 quoted in Lambe, "Legislative History," pp. 73-74.

structures, and objects significant in American history, architecture, archeology, and culture." According to the minutes of the next meeting on November 28:

> The question arose as to what "Culture" would include, and Mr. Utley said it was his understanding that Culture is anything not under the heading of history, archeology, and architecture. It is not possible to define it too well. The Smithsonian Institution has the most objects, but they are not in the picture, and we will have to make sure that they do not attempt to run away with the ball.[10]

A good deal of discussion revolved around the matter of ranking Register properties. Should the national historic landmarks be grouped together at the top of the list? Should further distinctions be made among properties of regional, state, and local significance? Should there be different standards of protection based on the significance levels?

At the November 28 meeting the task force favored "a category of inviolate properties of national significance, such as Mount Vernon and Independence Hall--everything else would be subject to destruction if determined to be in the public benefit." Bill Brown prepared a paper for the next meeting on December 5 advocating that all properties be ranked by significance and assigned to "must preserve," "should preserve," and "desirable to preserve" categories. The projected volume of Register properties and competing public interests made such priorities essential, in Brown's view; he thought it better to focus preservation attention on the most important places than to diffuse it indiscriminately among all.[11]

Ronald Lee favored three significance categories--national, state or

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[10]Historic Preservation Task Force minutes, National Register files.

[11]Ibid.; Brown, "The Function of Rank-Order Categories in the National Register, National Register files.

regional, local--but did not want to assign different preservation standards to them in such explicit fashion. Ernest Connally, who would exercise heavy influence over the task force recommendations as the prospective chief of OAHP, was even less inclined to rank Register properties. To do so, he feared, would signal that those in the lower categories were expendable. Rather than prejudging whether particular sites "must" or "should" be preserved, he preferred to weigh the public benefit of their preservation in the context of actions affecting them, during the review process to be established by the Advisory Council on Historic Preservation under the act.[12]

The task force report reflected Connally's position, prescribing the Register format as "an ungraded, uncategorized list of properties arranged alphabetically by States."[13] The first publication of the Register, in the February 25, 1969, Federal Register, did not even identify which properties were national historic landmarks. Bill Murtagh, Keeper of the National Register, viewed the Register primarily as a means to recognize and reinforce the environmental and aesthetic contributions of locally significant properties in community life. To him and other devotees of this "new preservation," the landmarks program overemphasized associative values (the "Washington slept here" syndrome) and museum-type properties isolated from contemporary social concerns.

Although landmark status was noted in later publications of the Register, landmarks were still listed alphabetically with other entries

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[12]Historic Preservation Task Force minutes; interview with Ernest A. Connally, Apr. 25, 1984; Utley interview.

[13]Memorandum, Utley to Hartzog, "Report of the Historic Preservation Task Force," Feb. 16, 1967, National Register files.

and with no suggestion that they warranted higher consideration. In 1980 the National Historic Preservation Act was amended to give landmarks somewhat more protection from federal undertakings than other Register properties, but no change was made in the Register itself reflecting this modification.

In his earlier proposal for the Register's initial content, Bob Utley had included all structures recorded by the Historic American Buildings Survey. This was quickly seen as unworkable: many of the HABS-recorded structures had been demolished, and there was no way to tell which survived without extensive investigation. Nothing was entered in the Register solely because it appeared in HABS, therefore. Instead, HABS structures that had not been listed by mid-1969 as a result of landmark status or state nomination appeared in the Advisory List to the National Register of Historic Places published by OAHP that year, along with properties that had been considered but rejected for landmark designation. Copies went to the states with the suggestion that they investigate these places during their surveys.

The task force prescribed for automatic placement in the Register another class of properties that Utley had not mentioned in his prospectus: the historical units of the National Park System. The national significance of most had been established by Congress in authorizing them, and they clearly fell within the intended comprehensive scope of the Register. Little or no thought was then given to the fact that the Service's own development of these parks would become subject to Advisory Council review under Section 106 of the act. The Advisory Council's review procedures had not yet been worked out, and Section 106 compliance was seen in any case as applying largely to other federal agencies whose

programs regularly impaired historic properties.[14]

Utley's proposal that each state be asked to designate an agency to handle its Register program was implemented in January 1967, when Secretary of the Interior Stewart L. Udall signed letters to all state governors. Drafted by James M. Lambe in the Service's legislative office, they read in part:

> I would appreciate very much your letting me know the officer or agency whom you designate to represent the State in preparing surveys, receiving grants, and carrying out other phases of the program. With this information we can consult with your representative to work out the basis for grants when funds become available, and can eventually obtain the name of the State representative authorized to enter into contractual relationships on behalf of the State.[15]

The letters enclosed copies of the act and an explanatory statement.

This procedure and arrangement closely followed the implementation of the Land and Water Conservation Fund Act of 1965 by the Bureau of Outdoor Recreation. The officials designated by the governors even received the same title--state liaison officer (SLO)--as those responsible for the Land and Water Conservation Fund program; the more descriptive "state historic preservation officer" (SHPO) was not substituted until 1973. They were a varied group, falling into three general categories of roughly equal size: state park administrators, state historical society directors, and a polyglot of highway, housing, and planning officials. Among the initial designees were a former Park Service director, Conrad L. Wirth, then chairman of the New York State Historic Trust, and a future Service director, William Penn Mott, Jr., general manager of the

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[14]Utley interview.

[15]Letters dated Jan. 4, 1967; copy in National Register files.

California Department of Parks and Recreation.

Contrary to the expectations of some in the Service, the state park and historical society offices were frequently less adapted to handling the state programs than the diverse offices in the third category. The parks departments and historical societies were accustomed to dealing with historic sites, museums, and archives that they operated with their own employees. Offices dealing more broadly with planning, on the other hand, often seemed better able to grasp the vision of the nationwide preservation program, view preservation in environmental and economic development terms, and take advantage of citizen involvement. Bill Murtagh later regretted that his office had not promptly supplemented Udall's letter with guidance on the selection of state preservation officers and agencies: "Had better direction been given...we might have had the responsibility placed in more State planning agencies where it might have functioned better and quicker."[16]

A 1975 Service report by Robert B. Rettig found that 21 state historic preservation offices were then parts of broad historical or cultural agencies, 16 were in natural resources or parks departments, and 11 were independent agencies. Rettig thought all arrangements satisfactory "if the office has sufficient public identity and ability to function on its own. Generally, this situation is likely to occur when the preservation office is an independent agency or is a fairly autonomous division of a larger agency, and when the SHPO has day-to-day contact with the preservation program."[17]

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[16]Memorandum, Murtagh to Director, Heritage Conservation and Recreation Service, June 1979, National Register files.

[17]"Conserving the Man-Made Environment," Sept. 1, 1975, pp. 69, 76.

Among the products of the Utley task force was a draft handbook outlining procedures for conducting statewide surveys and plans, nominating properties to the National Register, applying for grants-in-aid, and accounting for grants funds. After circulation to the SLOs, members of the Advisory Council, and other interested parties for review and comment, it was refined under Russell Keune's direction and issued in the summer of 1968 under the title Grants for Historic Preservation: Guide for State Participation.

According to this grants manual (the shorthand term for it), the results of a state's survey were to become the first volume of the state's "comprehensive statewide historic preservation plan" prerequisite to grants under the law. The survey would be conducted under the direction of the SLO and his staff, which was to include professionals qualified in history, archeology, and architecture; and the properties identified would be evaluated by a state review board, also containing members qualified in these disciplines. The survey volume would consist of a preface, completed National Register inventory-nomination forms on all eligible properties identified, and a certificate of approval signed by a majority of the state review board. The notion that all of a state's Register nominations could be submitted en masse following a single survey seems naive in retrospect, but it was consistent with the impressions conveyed during the legislative process.

The decision to require professional credentials on the state staffs and review boards was an important one. It reflected early awareness that the National Register would become in large measure a state rather than a federal creation, so that expertise at the state level would be vital to its credibility. The fact that Register nominations had undergone

professional scrutiny at that level was helpful in countering legal challenges to Register listings. Defenders could show that nominations were based on "a consortium of trained, informed opinion-making," in Bill Murtagh's words, not on caprice.[18]

In practice, it was difficult for many states to obtain and maintain staffs and review boards with the required credentials. The Service did not insist on these requirements in the early years, but in September 1973 Jerry Rogers told an SHPO committee that too many exceptions threatened the integrity of the national program. The following April Russell Mortensen, OAHP director, wrote all SHPOs warning that participation in the program after January 1976 would require state staffs with the full complement of preservation expertise. Henceforth each state would submit a current staff and review board roster with its annual work program for recertification by the Park Service.[19]

In response to a complaint from the Kansas SHPO about the stiffer policy, Mortensen reviewed the background to it and revealed its tactical component:

> [A] very small percentage of the States had been responsive to basic guideline requirements promulgated in 1966 [sic] that each of the States develop a State staff professionally competent in the fields of architecture, history, and archeology or other disciplines as may be locally deemed necessary. In the interest of getting the program off the ground when the funding levels were of a negligible nature, it was deemed relatively unimportant, in the overall scheme of things, that this guideline was not then being followed.... With the growth of the funding level, however, the political sensitivity of the programs has increased. Continuing to ignore this basic requirement potentially jeopardizes the entire national structure as

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[18]Memorandum, Murtagh to Director, HCRS, June 1979.

[19]Interview with Rogers, May 7, 1986; Summary Minutes of SHPO Policy Group, Mackinac Island, Mich., Sept. 25-26, 1973, National Register files; letter, Mortensen to SHPOs, Apr. 8, 1974, ibid.

> the program grows. Any intelligent lawyer could make mincemeat out of any attempted defense of an historic site in Kansas jeopardized by a federal project were he to uncover that neither we nor you are following the basic guidelines laid down after passage of the act in 1966.
>
> Further, with the coming Bicentennial and the general temper of the times, it appears to us that the time is right for the establishment of a well staffed preservation-oriented office within each State....
>
> Look upon this as a stick which we are placing in your hands with which you can go to your State legislature, organized industry, organized philanthropy, or whatever other source you may have, to provide your match as a means to strengthen your case for enlarged local financial assistance...."[20]

In a 1975 report prepared for Senator Jackson, the Advisory Council declared: "Only 10 States are conducting surveys on a comprehensive, scheduled basis, while the remaining 43 programs are conducted without a definite plan.... A major shortcoming has been the lack of coordination of local survey efforts with State surveys and the National Register program." The Park Service then rated only 14 programs as operating with sufficient professional expertise. Nearly all states had at least one full-time historian, archeologist, and architect, according to the simultaneous Rettig report, but a majority had no more than this three-person minimum.[21] Still, the situation was better than it had been. "[The] decision to key professional staffing standards to the grants process resulted in an obvious improvement of the number and quality of working professionals at the state level...," Bill Murtagh declared in 1979. "Most of the States rendered thanks for our assistance in giving them clout with their State legislatures to secure minimum staff."[22]

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[20]Letter to Nyle Miller, May 2, 1974, National Register files.

[21]Advisory Council on Historic Preservation, The National Historic Preservation Program Today (Washington: Government Printing Office, 1976), p. 13; Rettig, "Conserving the Man-Made Environment," p. 84.

[22]Memorandum, Murtagh to Director, HCRS, June 1979.

The Utley task force prepared definitions of the kinds of properties eligible for the National Register, criteria for evaluating their significance, and a form--subsequently refined for data processing purposes in consultation with IBM--on which states would nominate properties. Getting the state surveys and nomination process underway would require more than disseminating paper, however. A major missionary campaign was needed to spread the word about the new program and inspire participation --especially in the absence of any significant grants to the states until 1969.

In January 1967 the task force met with representatives of several future participants, including the Pennsylvania Historical and Museum Commission, the Virginia Historic Landmarks Commission, and the New York City Landmarks Preservation Commission. The task force report was made public at a Williamsburg preservation conference in March sponsored by Colonial Williamsburg and the National Trust and coordinated by Bill Murtagh (still with the Trust). Discussions there relating to the new program were summarized in a widely distributed booklet, Historic Preservation Tomorrow.

After Ernest Connally, Murtagh, Jerry Rogers, and other new OAHP staff arrived at midyear, planning began for a series of regional conferences to explain the National Historic Preservation Act and clarify state roles under it. Meetings were held in Boston, Richmond, Columbus, San Juan, Savannah, Denver, Omaha, and Pacific Grove, California, between November 1967 and May 1968. In addition to OAHP officials, attendees included SLOs and representatives of the National Trust, the American Association for State and Local History, the American Institute of

Architects, the American Institute of Planners, the American Society of Landscape Architects, the American Society of Civil Engineers, the Society of Architectural Historians, the Society of American Archeologists, and the Garden Club of America. According to Murtagh, "The meetings were used as a vehicle to mix the public and private preservation interests for the first time on a large scale." They enabled federal and state officials to get acquainted, SLOs to raise issues, OAHP staff to learn about local problems, and lagging states to become motivated to greater participation.[23]

State nominations came in slowly at first. Only six properties from the states were listed during 1968. A report on the year's activity atttributed this rate of progress to the lack of grants appropriations but noted that some states were proceeding on their own initiative. OAHP shared responsibility for the slow start: it did not distribute nomination forms until January 1969. That March the National Register Newsletter, an informational circular on the program, noted eight more listings including the Old Post Office in St. Louis, Chateau-sur-Mer in Newport, Tuckahoe in Virginia, and the Walter Luther Dodge House in West Hollywood, California (demolished the following year). By August 220 nominations had come in from 24 states. Virginia led with 57; Missouri was next with 44.[24]

Still composed almost entirely of Park Service historical areas and national historic landmarks--totaling some 960 properties--the National

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[23]Ibid.; "Summary Report of the 1967-1968 Regional Conferences on the new Preservation under the National Historic Preservation Act of 1966, Public Law 89-665," National Register files.

[24]Progress Report on National Register Activities, April-September 1968, National Register files; National Register Newsletter file, ibid.

Register was published in the February 25, 1969, Federal Register primarily to inform federal agencies of what they would need to take into account under Section 106. Additions appeared periodically in subsequent issues. The Service published a popular version of the Register in hard and soft cover, with short property descriptions and selected illustrations, a year later (although it bore a 1969 date). The book was ceremoniously presented at a candlelight reception hosted by George Hartzog and the Public Printer (head of the Government Printing Office) at the National Trust's Decatur House. Copies went to all state governors and members of Congress as well as the SLOs. Later editions appeared in 1972, 1974, and 1976. The book format was discontinued thereafter: the Register was growing too large and too fast to be published with reasonable currency and economy in such fashion.

Nominations increased rapidly after 1970. There were more than 1,000 new entries in the Register in 1971, more than 2,000 in 1973, and more than 3,000 in 1978, when new tax benefits for commercial rehabilitation of Register properties began to have a significant effect on the volume. In 1977 OAHP supplemented its How To Complete National Register Forms publication with guidelines on multiple resource nominations and thematic group nominations. These nominations encompassed all eligible properties in a given area or related to a particular theme as a means of expediting the process.

A backlog of unprocessed nominations developed and grew coincident with the shift of the program to the Heritage Conservation and Recreation Service in 1978. Director Chris Delaporte set a 60-day emergency period that November and December to catch up on the backlog and institute other reforms. With the assistance of staff detailed from other functions, the

backlog was largely eliminated.[25]

The National Trust did a study of the Register's composition as of November 1981. It counted some 20,300 individual properties and about 2,500 districts containing 147,000 individual properties, for a total of 167,300 properties. Although districts constituted less than 11 percent of the entries, they contained more than 90 percent of all included properties. Only about 1,700 entries were nationally significant historical parks and landmarks; the rest were properties of state and local significance. The most common area of significance was architecture, relating to 71 percent of all listings. More than two-thirds of the properties were 19th century; less than five percent were prehistoric. Sixty-five percent of individually listed properties were privately owned, and 33 percent of all listings included private residences.[26]

The framers of the National Historic Preservation Act envisioned that federally owned properties would also be entered in the Register and afforded review protection under Section 106 when affected by undertakings of their custodians or other federal agencies. In November 1967 Bob Garvey, executive secretary of the Advisory Council, first suggested that federal agencies might nominate their eligible properties to the Register. At that time Bob Utley persuaded him that the state surveys would take care of federal property nominations.[27]

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[25]Memorandum, Delaporte to Associate Director, Preservation of Historic Properties, Nov. 2, 1978, Jerry L. Rogers office files; memorandum, Delaporte to Secretary of the Interior, Jan. 30, 1979, ibid.

[26]"A Profile of the National Register of Historic Places," 1983, National Register files. The Register held more than 45,000 entries by 1986.

[27]Memorandum, Garvey to Chief, OAHP, Nov. 7, 1967, Ernest A. Connally

As it developed, the Park Service itself upset this understanding. When a representative of the Wyoming SLO visited Yellowstone National Park in 1969 to inventory eligible properties there, Superintendent Jack K. Anderson protested what he viewed as state interference to George Hartzog. Hartzog sided with Anderson and let it be known that the Service would nominate its own properties (outside the already listed historical areas).[28] "The Park Service is now undertaking its own inventory of the historic resources within the natural and recreational areas under its jurisdiction," the April 1969 National Register Newsletter announced. "In conducting these surveys the National Park Service welcomes the advice and assistance of the State Liaison Officers, but there is no need for them to make a duplicate survey." The SLOs were promised copies of forms on listed properties.

The Newsletter announcement was in fact a statement of intent more than reality. Although Park Service historians completed National Register forms on a few park resources, no comprehensive Service inventory was underway or imminent. Nominations of properties held by other federal agencies also lagged, in some cases because states were reluctant to include them in their surveys. In 1970 a Council on Environmental Quality task force with members from OAHP met to consider ways of improving the national preservation program. Several of its ideas were included in President Richard M. Nixon's February 8, 1971, environmental message to Congress. One culminated in Nixon's Executive Order 11593 of May 13, 1971, "Protection and Enhancement of the Cultural Environment."

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office files.

[28]Jerry L. Rogers speech (recorded), Jan. 24, 1984; Utley interview.

Executive Order 11593 directed all federal agencies to do what the Park Service said it would do in 1969. In cooperation with the SLOs, they were to "locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places" by July 31, 1973. Simultaneously, the Secretary of the Interior was to encourage states to survey and nominate federal properties.

The executive order also resulted in official recognition of a new category of historic properties: properties eligible for the National Register. When Bob Garvey had presented draft preliminary procedures for Section 106 compliance at the second meeting of the Advisory Council in September 1967, the Council members advocated giving as much consideration as possible to qualified properties not yet listed in the Register. OAHP's Advisory List to the National Register of Historic Places, which included unlisted properties that had been identified by HABS and the landmarks program surveys, went to federal agencies in 1969 to indicate "those places which merit consideration in the planning and approval procedures associated with their projects until such time as they might be added to the National Register."[29] The executive order gave force to these urgings. It required agencies to "exercise caution during the interim period until inventories and evaluations are completed...to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished, or substantially altered." They were to "refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for

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[29]Advisory Council minutes, Sept. 27-28, 1967, National Register files; Advisory List preface.

inclusion on the National Register of Historic Places." If the Secretary --in consultation with the SLO--determined the property eligible, the agency could not proceed with its action until it had given the Advisory Council an opportunity to comment.

This extension of the Council's responsibility was ratified in the 1976 amendments to the National Historic Preservation Act (which gave the Council independent status) by modifying Section 106 to apply to eligible as well as listed properties.[30] Register eligibility thus attained legal standing.

Secretary of the Interior Rogers C. B. Morton wrote to all agency heads on August 5, 1971, to publicize Executive Order 11593 and ask them to designate liaison officers for property nominations.[31] OAHP held a meeting in November to instruct the agency representatives, and it issued procedures for federal nominations and eligibility determination requests. Because the latter were normally triggered by impending projects, efforts were made to expedite them. Properties found eligible were published in tandem with listed properties in the Federal Register.

As happened with the state programs after the 1966 act, federal agency surveys and nominations under the executive order got off to a slow start. Few agencies had missions relating even remotely to historic preservation or staff with any training in the field. Without the incentive of grants, success depended heavily on proselytizing by OAHP and on the specter of legal action should an agency threaten some potentially eligible property without having followed the prescribed procedures.

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[30]P.L. 94-422, Sept. 28, 1976.

[31]Memorandum, Morton to Heads of All Federal Executive Departments and Agencies, Connally office files.

The July 31, 1973, deadline for identifying and nominating all likely candidates was wildly unrealistic and passed almost without notice. Even the Park Service made no serious effort to meet it. In its 1975 report to Senator Jackson, the Advisory Council characterized the executive order's inventory and nomination requirement as "partially effective." Fifty-five agencies had designated preservation officers. "Twenty-five of these agencies are conducting substantial identification programs, while the remainder vary in quality from poor to nonexistent," the Council reported. It gave highest marks to the General Services Administration, which had 105 Register entries, while noting that "few other agencies have devoted sufficient staff or funds to do a comparable job."[32]

The expired deadline raised some doubts as to the continuing effect of the executive order requirement, which in any event lacked the force of law. To reaffirm and strengthen the requirement, the National Historic Preservation Act Amendments of 1980 repeated it as an open-ended mandate:

> With the advice of the Secretary and in cooperation with the State historic preservation officer for the State involved, each Federal agency shall establish a program to locate, inventory, and nominate to the Secretary all properties under the agency's ownership or control by the agency, that appear to qualify for inclusion on the National Register.... Each Federal agency shall exercise caution to assure that any such property that might qualify for inclusion is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.[33]

By directing agencies to "establish a program" for inventory and nomination, the law allowed for some discretion in procedure. Surveys focused on areas of project impact would continue to take precedence over comprehensive surveys. A 1986 report prepared by the Park Service

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[32]The National Historic Preservation Program Today, p. 12.

[33]P.L. 96-515, Dec. 12, 1980.

on the national preservation program endorsed this priority:

> In some cases where agencies do not expect to be affecting properties either immediately or in the distant future, there is no compelling reason for the agency to nominate such properties to the National Register. Often the effort and expenditure needed to prepare and process those nominations could be applied to other activities, including more immediate materials preservation needs.[34]

At the regional conferences held in 1967-1968 to promote the National Register program, Bill Murtagh educated his audiences on the concept of local significance--the basic ingredient of the "new preservation." He encouraged them to stop thinking primarily in terms of individual landmarks and to think more in environmental terms, leading them to identify and nominate districts to be "preserved as a living part of our community life and development," as the preamble to the 1966 act urged.

Taking an expansive view of local significance, Murtagh was not troubled by the breadth with which some interpreted it in nominating properties. He was inclined to defer to local opinion, believing that "the further you go down the spectrum of significance, the further up has to go a federal staff's reliance on local professional value judgment-making."[35] At the same time, if federal dollars were going to be spent on properties and federal agencies were going to have to consider them in their planning, some consistency in evaluation was required.

The 1977 National Heritage Trust Task Force proposed broadening the scope of the Register even further. It recommended that in addition

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[34]The Secretary of the Interior's 20th Anniversary Report on the National Historic Preservation Act, 1986, p. 61.

[35]Memorandum, Murtagh to Director, HCRS, June 1979.

to the "districts, sites, buildings, structures, and objects" specified in the 1966 act, the Register accept neighborhoods, cultural landscapes, and networks. Neighborhoods were defined by their contemporary ethnic character (like a Chinatown), cultural landscapes were natural settings with human associations (like Walden Pond), and networks were extended resources linked geographically or thematically (like the Oregon Trail or the California missions). The task force wanted to eliminate the existing criteria restrictions on birthplaces, graves, cemeteries, and properties achieving significance less than 50 years ago, and it suggested dropping the national, state, and local significance gradations.[36]

The new resource categories were included in the Carter administration's proposed National Heritage Policy Act of 1979, but neither the legislation nor the categories were adopted. The view prevailed that "neighborhoods" should not be accepted unless they also met the historic district definition. The other proposed categories appeared unnecessary given the ability of the existing district category and the new thematic resource nomination format to cover the kinds of resources they envisioned. Nor were the criteria restrictions and significance gradations abandoned.

The opposition to these recommendations reflected a growing concern that the Register was becoming overly inclusive. A report by staff investigators of the House Appropriations Committee in February 1979 voiced this concern:

> The legislative history of the 1966 act clearly reflects the intent of the Congress to establish a National Register which would afford recognition and protection to properties of State and local,

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[36]National Heritage Trust Task Force draft report, Aug. 23, 1977, National Register files.

> as well as National, significance. It is not so clear that the Congress intended that State and local significance be interpreted so broadly as the present directions of the preservation movement seem to indicate.
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> It is the opinion of the Investigative Staff that HCRS should take a second look at the National Register criteria, and decide what the role of the National Register should be. If all the built environment ends up listed in the National Register, it is obvious that the significance of such listing will be demeaned.[37]

In subsequent questions directed to HCRS, Chairman Sidney R. Yates of the House Interior appropriations subcommittee suggested that "very few areas would fail to qualify for listing in the National Register" if the latest administration proposals were adopted. HCRS responded by agreeing that the Register criteria must remain selective, and it cited examples of recently rejected nominations.[38]

Yates' comments also suggested that federal efforts should be directed more to nationally significant properties, allowing the states to take primary responsibility for those of state and local significance. This indication of shifting sentiment by the Democratic legislator most responsible for preservation funding anticipated by two years the direction predictably favored by the Reagan administration in 1981. Assistant Secretary of the Interior G. Ray Arnett then approved a "Federal Historic Preservation Agenda for the 80's" which in part recalled Bill Brown's position back in 1966 on ranking Register properties. Because the Register did not distinguish sufficiently among them, the document stated, "the same level of administrative obligation is applied to properties of varying degrees of significance.... What is needed

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[37]Surveys and Investigations Staff, "A Report to the Committee on Appropriations, U.S. House of Representatives, on Federal Historic Preservation Efforts," February 1979, Preservation Assistance Division files.

[38]Written questions by Yates with HCRS responses, 1979, Preservation Assistance Division files.

is a redefinition of the National Register criteria in order to clearly distinguish and articulate the difference between historic properties of local or State or National significance so that decisionmaking can be made on a sliding scale based upon the degree of a property's significance."[39]

Just six months earlier, the National Historic Preservation Act Amendments of December 12, 1980, had given national historic landmarks their first explicit recognition in law and specified greater consideration for landmarks than other Register properties by requiring federal agencies "to the maximum extent possible, [to] undertake such planning and actions as may be necessary to minimize harm" to them. It also authorized direct grants to landmarks threatened with demolition or impairment.[40] In 1979, while under HCRS, the landmarks program had been subsumed under the National Register Division and all but terminated. With the abolition of HCRS in 1981 and the return of the preservation programs to the Park Service, the landmarks program was replaced in the History Division (its home until 1973) and given much greater attention. The division revived the nationwide thematic surveys that formed the basis for landmark designation, and in 1986 it published the first landmarks catalogue in a decade. These developments all reflected a swing of the pendulum back toward the traditional federal focus on national significance.

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[39]Historic Preservation Policy Work Group, "Federal Historic Preservation Agenda for the 80's," June 12, 1981.

[40]P.L. 96-515, Secs. 206, 201(a).

Another issue affecting the progress of the National Register over the years was that of owner participation and consent. A property's qualifications for the National Register were determined by professional evaluation; its owner's wishes with respect to listing had no legitimate role in the decision. The Service insisted, moreover, that listing had no effect on an owner's rights. It constrained only federal agencies from affecting Register properties without complying with the Advisory Council's review process. A private owner remained free to alter, demolish, sell, or do anything else with his property subject to any local restrictions.

Some owners were not persuaded by this argument. Although Register listing per se might not affect their freedom, it could abet passage of local historic district ordinances that would. There was also the possibility that an owner seeking to benefit from a federal undertaking affecting his property would be unable to do so. W. R. Grace and Company encountered this situation when it sought a federally guaranteed bank loan for mining operations on land within the Register district of Green Springs, Virginia, in the mid-1970s. Its attorney asked that owner consent be required for Register listing, citing "the fact that once a property is listed in the National Register the owner of the property is placed in a position to be denied equal standing with others under Federal programs."[41]

Although the Service maintained its opposition to owner consent, some states found it politic to consider the opinions of owners and local officials in deciding to nominate properties. The California SHPO was

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[41]Letter, O. Mario Favorito to William J. Murtagh, Sept. 26, 1975, National Register files.

giving local authorities an effective veto over nominations by 1974. A year later the Advisory Council reported, "It is not uncommon for a nomination, professionally proper, to be held up by a State, frequently by the Governor's office, because entry on the National Register will prove inconvenient for a construction project advocated by the State."[42]

Two steps taken in 1976 would bring the owner consent issue to a boil by the end of the decade. The Service embarked on a multi-year study of properties associated with commerce and industry to identify potential national historic landmarks in these themes. The study resulted in the nomination of numerous stores, office buildings, shops, and factories--many still in commercial or industrial use. Coincidentally, the Tax Reform Act of 1976 contained provisions designed to encourage preservation of such income-producing properties listed in the National Register. As an incentive to their rehabilitation, it allowed rapid depreciation or amortization of rehabilitation costs. To discourage their demolition, it forbade demolition costs to be treated as deductible business expenses and denied any form of accelerated depreciation for new structures built on their sites.[43]

With the latter provision, it was no longer possible to assure affected property owners that Register listing would not interfere with their present and future use or plans (assuming no federal involvement). Listing now carried a financial penalty for demolition. Not surprisingly, some owners objected. The chairman of Marshall Field and Company, whose

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[42]Letter, Kathryn H. Kaiser to William J. Murtagh, May 21, 1974, National Register files; The National Historic Preservation Program Today, p. 28.

[43]P.L. 94-455, Sec. 2124, Oct. 4, 1976.

Chicago store was among the landmark nominees in 1977, wrote, "[W]e simply cannot be put in a position where additional hurdles and competitive restraints may be placed in the path of upgrading and adapting the store to meet the needs of our customers and the changing demands of the central city."[44] R. H. Macy, Montgomery Ward, Sears Roebuck, and the American Stock Exchange were among others protesting nominations of their historic properties. Under Secretary of the Interior James A. Joseph nevertheless included these properties among 30 commercial landmark designations in 1978.

The next batch of landmark nominations from the theme study, in 1979, included Proctor and Gamble's Ivorydale plant near Cincinnati. The company's board chairman wrote Secretary of the Interior Cecil D. Andrus to express concern about the effect of the tax act. "Also, we are concerned that the Congress, having once imposed restrictions on landmark owners, might oppose other and perhaps more onerous restraints in the future...," he added.[45] His attitude typified that of other industry representatives, already faced with federal health, safety, and antipollution requirements, who feared the demolition disincentives of the tax act less than the precedent they set for further entanglements.

Ernest Connally, believing that many of the industrial properties did not lend themselves to preservation and concerned about brewing political repercussions, advised HCRS Director Chris Delaporte to hold the protested nominations, but Delaporte insisted on forwarding them to

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[44]Letter, Joseph A. Burnham to George F. Emery, Aug. 15, 1977, History Division files.

[45]Letter, Edward G. Harness to Andrus, Apr. 3, 1979, History Division files.

Secretary Andrus. Letters from Sen. John Glenn and other Ohio politicians backing Proctor and Gamble also arrived on the Secretary's desk. The opposition triumphed when Rep. Willis D. Gradison, Jr., of Cincinnati managed to insert a provision in the fiscal 1980 Interior appropriations bill, enacted November 27, 1979, "That none of the funds appropriated to the Heritage Conservation and Recreation Service may be used to add industrial facilities to the list of National Historic Landmarks without the consent of the owner."[46]

Proponents of owner consent sought to extend it to all National Register nominations in pending legislation to amend the National Historic Preservation Act. HCRS and most preservation groups tried to head off the requirement. Acting Keeper of the National Register Carol D. Shull wrote all SHPOs in August 1980, "We firmly believe that the integrity of the National Register can be maintained only if additions can be made to the Register if a property meets the National Register criteria, regardless of an owner's consent." Director Delaporte reaffirmed the bureau's position to Rep. John F. Seiberling, chairman of the subcommittee considering the legislation: "[W]e do not support the concept of owner concurrence for the evaluation and recognition of historic resources and believe it is important to emphasize that listing on the National Register does not in any way restrict what a private property owner can do with his property...." When the House Interior committee reported favorably on the legislation with the owner consent provision, added through the efforts of Rep. Dick Cheney of Wyoming, five committee members recorded their disagreement: "We feel that this change is a most unwise decision.

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[46]P.L. 96-126.

It constitutes a serious threat to the current professional integrity of the National Register, and will result in a significant diminishment of the usefulness which the Register has served for so long, as a professional tool to identify and to assist in the preservation of historic properties nationwide."[47]

Congress nevertheless passed the National Historic Preservation Act Amendments of 1980 with the provision, and President Carter signed the measure on December 12. The owner consent requirement was worded thus:

> The Secretary [of the Interior] shall promulgate regulations requiring that before any property or district may be included on the National Register or designated as a National Historic Landmark, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn.[48]

The provision went on, however, to specify that

> The Secretary shall review the nomination of the property or district where any such objection has been made and shall determine whether or not the property or district is eligible for [Register] inclusion or [landmark] designation, and if the Secretary determines that such property or district is eligible...he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination.[49]

This allowance for eligibility determination meant that properties kept off the Register by objecting owners could still become subject to the

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[47]Letter, Shull to All SHPOs, Aug. 28, 1980, National Register files; letter, Delaporte to Seiberling, Sept. 29, 1980, and minority statement in H. Rept. 96-1457, Oct. 10, 1980.

[48]P.L. 96-515, Sec. 201(a).

[49]Ibid.

Advisory Council's review process under Section 106. Representative Seiberling called the overall provision "a reasonable and workable compromise which adequately takes into account the concerns of private owners without seriously eroding the usefulness of the National Register as a planning tool and comprehensive historical record."[50]

Enactment of the legislation forced an immediate moratorium on the listing of private properties until November 16, 1981, when new regulations incorporating procedures for notification, objection, and eligibility determination went into effect.[51] Except for national historic landmark nominations initiated at the federal level, the burden of the notification requirements fell largely on the SHPOs. Relatively few nominations--at least among those forwarded to Washington--encountered owner objections. The demolition disincentives in the tax code that had fueled the owner consent issue expired at the end of 1983, leaving less cause for objection thereafter.[52] By 1986 about 650 properties whose owners objected to listing had been found eligible for the Register under the new regulations.

The elevation of owner consent to legal resolution provides an interesting commentary on the workings of the federal system and the relative sensitivity of the federal and state governments to local interests. At the state level there was some willingness not to press nominations when owners and elected officials objected. The federal

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[50] 126 Congressional Record 29827.

[51] Federal Register, Nov. 16, 1981, p. 56183.

[52] A 1984 tax code revision reinstated the denial of deductions for demolition costs but made it applicable to all buildings, so that historic structures were not singled out for special treatment.

program administrators, further removed from local pressures, insisted on proceeding with their landmark nominations in the face of such opposition. They were attempting, quite properly, to keep the process "pure"--guided only by professional considerations. They were also inviting what usually happens when bureaucrats pursue courses at odds with public sentiment: politicians intervene to redress their constituents' grievances. It was thus the Washington-run landmarks program rather than the state-based programs that first prompted congressional action for owner consent.

When state nominations were trickling in, relatively speaking, during the late 60s and early 70s, the National Register staff in OAHP had time to scrutinize each before both Bill Murtagh and Ernest Connally signed their approval. As the trickle increased to a flood, especially after the tax benefits enacted in 1976, and as the staff failed to increase commensurate with the nomination and tax act certification workload, substantive review of Register forms became more difficult.

In 1973 Jerry Rogers, then chief of registration, proposed automatic acceptance of nominations from states with demonstrated professional capability. There was doubt about the legality of doing this; and notwithstanding Murtagh's desire to defer to state and local opinion on properties of state and local significance, too many states could not be relied on for consistency in both the substantive and technical aspects of nomination. State staffs were not of uniformly high quality, and the review boards, which enabled public involvement and gave SHPOs the final recommendations on nominations, were a weak link in the process. Murtagh especially regretted his office's lack of contact with these boards to foster broader

understanding of the Register's intended content and purpose.[53] Despite much published guidance, including the comprehensive How To Complete National Register Forms booklet first issued in 1972 and the supplementary "How To" bulletin series begun in 1978 (how to establish Register boundaries, evaluate properties of recent significance, improve photo quality, etc.), the quality of nominations remained uneven.

The review backlog that accumulated by late 1978 necessitated a crash program to overcome and greater management emphasis to see that it did not recur. Congress reinforced this imperative in the National Historic Preservation Act Amendments of 1980. It specified that a property nominated without owner objection by a state (or federal agency) with an approved historic preservation program would be automatically listed in the Register 45 days after receipt unless the Secretary of the Interior disapproved it within that period. Commenting on this provision in its report on the legislation, the House Interior committee made clear that substantive review of all nominations was not required:

> The purpose of this provision is to assure that there are no unnecessary delays in processing the nominations. If the procedures for making nominations have been properly followed, and if the documentation is sufficient, the Secretary should be able to approve the nomination without a substantive review. The Secretary should, however, review particular nominations on a spot-check basis, or as otherwise necessary, to insure the integrity of the program.[54]

The Register office adopted a new system for operation within the 45-day requirement. All nominations would receive technical review to insure that the required documentation was present; those with missing or inadequate information would be returned immediately. For substantive review

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[53]Memorandum, Murtagh to Director, HCRS, June 1979.

[54]H. Rept. 96-1457, Oct. 10, 1980.

purposes, states and federal agencies were divided among three categories based on their past performance. Those with a return rate under 15 percent during fiscal years 1979-1980--29 states--were assigned to Category I and would have only one-fifth of their nominations subjected to substantive review. Eleven states with a return rate between 15 and 24 percent went into Category II; one-third of their nominations would be scrutinized. The remaining states, in Category III, would receive substantive review of all nominations. With its announcement of the new system, the office provided recommendations for improving nominations: it sought summary paragraphs at the beginning of the description and significance sections; better evidence of property context and integrity, stronger justifications for exceptions to Register criteria (e.g., for properties attaining significance less than 50 years ago), clear delineation of contributing and noncontributing resources in districts, and more precise boundaries.[55]

The National Historic Preservation Act Amendments of 1980 did more to elevate the role of the states. The legislation gave statutory recognition to the state programs with their SHPOs, professional staffs, and review boards--previously just administrative creations of the federal program--and specified the responsibilities of the SHPOs in administering the programs. It also provided that local governments meeting certain requirements could participate officially in the nomination process and grants program upon certification by the SHPOs. By 1986 there were 180

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[55]Letter, Jerry Rogers to All SHPOs, Apr. 9, 1981, National Register files; letter, Carol Shull to All SHPOs, Sept. 8, 1981, ibid.; letter, Shull to All SHPOs, Dec. 2, 1981, ibid. After the initial categorization, Category III was expanded to include all states and federal agencies that had submitted fewer than 20 nominations during the analysis period. All agencies fell into this category except GSA, which merited Category I assignment.

certified local governments.

To maintain their status as approved programs under the legislation, state programs must be evaluated periodically by Park Service program officials. As a result of these state program evaluations, the nomination review formula adopted in the early 1980s gave way to a more refined approach focusing on the particular problem areas of particular states or, as Jerry Rogers told Director Russell E. Dickenson in 1984, on "nominations from States known to have difficulty with specific types of properties or documentation."[56] This selectivity insured that staff effort would be concentrated where it was most needed.

Rogers' goal was a "programmatic nomination process" whereby the Service would concentrate largely on the process of nomination and leave the content to the states. As he explained it to Dickenson:

> After 17 years experience, all States are familiar with the National Register process and most are adept in its use. Since the vast majority of State nominations are for properties of State and local significance it is appropriate to rely on a State's judgment when the State uses a demonstrably sound, consistent, and professional process based on the National Register criteria, with documentation that meets a reasonable standard....
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> When moving to carry out a programmatic nomination process, certain things will not change. The Service will continue to "keep" a strong and vital National Register and be fully accountable for the registration process. The States, however, must shoulder primary accountability for the integrity of nominations of individual listed properties.[57]

Improvement of state historic preservation planning was essential to increased reliance on the states. According to the early guidelines, the comprehensive statewide plans required for grants-in-aid under the 1966 act were to incorporate and be based on completed state surveys

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[56]Memorandum, Rogers to Dickenson, Mar. 8, 1984, National Register files.

[57]Ibid.

(page 30). This was quickly recognized as unrealistic. States went through the motions of preparing "preliminary" plans using what survey data they had, but these were largely paper exercises. Lawrence E. Aten, chief of the Interagency Resources Division, later faulted the methodology of this approach:

> The "accumulation" strategy assumes that historic property data are unique and additive, and that effective planning cannot be undertaken until all or most of the potential data have been collected. Even if this were true, it obviously would be an impractical strategy because the desired information would not be available for decades, if then, while development and land use decision are being made now. Moreover, "planning" based on this strategy does not aid public administration because it considers all properties to be of essentially the same importance, having no system developed for differentiating between them; it requires that all properties need to be located in order to develop a management plan....[58]

In 1975 the Interagency Archeological Services Division developed a methodology to help Interior's outer continental shelf oil leasing program anticipate which areas would be most likely to hold submerged archeological resources. By 1978 Larry Aten and others had translated this predictive methodology into a new general planning approach, designated the Resource Protection Planning Process (RP^3). According to Aten:

> The alternative approach emphasizes the use of information other than its accumulation.... It assumes that the cultural landscape was created by non-random processes and that by identifying the significant roles in past settlement played by one or more key factors (such as environment, transporation networks, technology, etc.) a practical framework can be developed for partitioning an undifferentiated inventory of properties into manageable units. Working with these units, less ambitious management priorities and strategies can be developed with respect to sets or classes of information. These, in turn, make the identification, evaluation, and protection of individual properties and situations relate to an appropriate cultural context.[59]

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[58]Aten, "The Resource Protection Planning Process," Architectural Preservation Forum, December 1983.

[59]Ibid.

By 1986 the great majority of states had adopted some version of RP^3 and were identifying properties in the context of the thematic, temporal, and geographic study units they had developed. Jerry Rogers called the new kind of state plan based on this methodology "no longer something you write, but something you do."[60] By rationalizing property identification and evaluation, RP^3 aided the transition to his desired programmatic nomination process.

As the Service moved away from nomination review, it moved toward increasing the utility of the National Register as a planning tool--its primary intended function. The state inventories were still more comprehensive than the Register, and in practice, these had become the data base for planning that the Register was supposed to be. (The Service asked federal agencies to consult the states rather than rely solely on the Register in their project planning.) But there was potential for making the Register more useful, much of which would be realized in the National Register Information System (NRIS).

The Utley task force envisioned computerization of the Register in 1966, and IBM helped design the nomination form for this purpose. Nearly two decades passed before the objective was in sight. By the end of 1986 NRIS would encompass all Register entries (although not yet the Register-eligibles). Forty-five data elements on each property would enable rapid retrieval of a wide variety of information. States and federal agencies were expected to use the same elements to automate their inventories, broadening the system's planning value. They would be given access to the system and would eventually be able to enter nomination data directly.

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[60]Rogers interview.

In addition to aiding planning, this unprecedented accessibility to the Register was foreseen as enabling further decentralization of decisions on listings, eligibility determinations, and significance certifications for tax purposes.[61]

The general effort to decentralize responsibility was not universally appreciated by the states, especially as it was accompanied by less rather than more federal money to them after 1979. Advanced under Jimmy Carter and accelerated under Ronald Reagan, the trend nevertheless reflected the ascendant governmental philosophy of the 1980s. Most of the "new preservation" was essentially of local benefit and fell logically within the traditional spheres of state and local concern. The federal government might "keep" the National Register, but the states would properly become the dominant partners in expanding it.

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[61]Carol D. Shull, "The National Register After 20 Years," draft article for Preservation News, June 1986.

AIDING PRESERVATION

As George Hartzog was fond of saying, money is policy. Congress might embrace some great cause, but unless it authorized and appropriated sufficient funds to progress toward achieving it, its policy would not carry beyond the statute books. The funding provisions in the National Historic Preservation Act were key, therefore, to implementing the lofty declarations in its preamble.

The act specified two parties as recipients of matching grants-in-aid: the states and the National Trust for Historic Preservation. It authorized two kinds of grants to the states: grants for surveys and plans and grants for property acquisition and development projects. The federal funds could not exceed 50 percent of the respective costs involved and could not be applied to ongoing property maintenance and administration. The Secretary of the Interior was to apportion grants among the states based on his determination of their needs. Grants to the National Trust, also required to be matched equally, were authorized "for the purpose of carrying out the responsibilities of the National Trust." At the Secretary's discretion, they could support maintenance and administration of Trust properties. The act authorized appropriations of not more than $2,000,000 in fiscal 1967 and not more than $10,000,000 in each of the three fiscal years following.

The favored status given the National Trust in the act reflected its key role behind the legislation--a role stimulated by the prospect of federal funding for its own activities. This involvement meant that the

Trust was ready and waiting for the first appropriation before the states knew what was afoot, generally speaking. When it came--$300,000 in fiscal 1968--the Trust got it all.

On May 24, 1967, Hartzog wrote all state liaison officers seeking "letters of intent" as to how much they would be requesting for surveys and planning in fiscal 1969. By the following March 40 states had responded with requests totaling $1,754,263, an average of $43,857 per state. The sum proved wildly optimistic. President Lyndon B. Johnson's 1969 budget proposed $680,000 for grants, only about a third of the previous year's request. The House voted to repeat the 1968 appropriation; the Senate cut it to zero. In conference they compromised on a token $100,000. The National Trust got $17,500 of this negligible outlay; the $82,500 balance had to be spread among all the states.

The fiscal 1970 appropriation, the last under the original authorization, was a relatively respectable $969,000. This was still less than 10 percent of the amount authorized for the year, however, and the Trust got $300,000 of it--nearly a third. The Department of Housing and Urban Development was providing more support for community historic preservation in these years than the National Park Service.

The extremely modest support to the state programs prompted action on two fronts. A group of southern SLOs, joined by Bill Murtagh, met in May and June 1969 to discuss common concerns and form the Southern States Liaison Officers Council. Milo Howard of Alabama, chairman of the body, then invited all SLOs to convene at the annual meeting of the American Association for State and Local History in St. Paul that August. There was born the National Conference of State Historic Preservation Officers (so called beginning in 1973). The Service actively

encouraged and welcomed this organization as a lobby for increased grants funding and as a means of facilitating communication with and among the state program leaders.

Within the Service, Hartzog saw his new program as threatened with extinction or--equally bad--removal to HUD or elsewhere without appropriations to sustain it at something closer to the authorized levels. In 1970 Congress extended the funding authority for another three years, authorizing $7,000,000 in fiscal 1971, $10,000,000 in 1972, and $15,000,000 in 1973, after Hartzog demonstrated his commitment by shifting some $5,000,000 from road construction to the grants program in his 1971 budget request.[1] The grants appropriations rose to $5,980,000 in both 1971 and 1972 and $7,505,000 in 1973, exceeding the administration's budget request by $1.3 million in the latter year.

Congress reauthorized funding again in 1973, allowing $15.6 million, $20 million, and $24.4 million in fiscal 1974, 1975, and 1976. Appropriations of $11,505,000, $20 million, and $20 million followed, in each case matching the administration's request.[2] The increasing appropriations reflected Hartzog's successful strategy (fruitful beyond his departure at the end of 1972) and the growing constituency for the program among its actual and potential beneficiaries as the money reached significant levels.

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[1]P.L. 91-243, May 9, 1970. A superb legislative tactician, Hartzog acted in full confidence that Congress would restore the road funds.

[2]P.L. 93-54. July 1, 1973. Another $4,750,000 was requested, authorized, and appropriated for July-September 1976, the period between the end of fiscal 1976 and the beginning of fiscal 1977 on October 1 of that transition year.

Survey and planning grants went largely for staff salaries, travel, and other personal services required to identify historic properties and nominate them to the National Register. The acquisition and development project, or "bricks-and-mortar," grants held greater potential for constituency building and could be used to fund work on properties owned by state and local governments as well as private parties. The problem with these appealing grants was that, under the law, they had to accord with comprehensive statewide preservation plans approved by the Secretary of the Interior (in reality, OAHP). And the Service grants manual issued in 1968, reflecting the legislative history, prescribed the statewide survey results as the first volume of the state plan. If taken seriously, this meant that a state could receive no project grants until it had identified and nominated virtually all its eligible properties.

Because no state had the remotest prospect of meeting this requirement, it was not taken seriously. Charles E. Lee, the South Carolina SLO, later recalled a meeting with Ernest Connally on May 23, 1969, at which the OAHP chief exercised his creativity:

> I told Ernest that I thought we would never get the funding needed for the program until we started providing grants for the brick-and-mortar projects which citizens all over the country wanted. Yet the law itself required the writing and approval of a statewide Historic Preservation Plan before acquisition and development grants could be applied for. Which of the states--certainly not South Carolina--was going to spend months of labor writing a statewide plan with no assurance that there would be any money for acquisition and development projects at the end?
>
> Then Ernest Connally did a cavalier, unbureaucratic, statesmanlike thing. Pulling out the Grants and Procedures Manual, he turned to the sketchy outline for a state plan provided there. "Go home," he said. "Write a paragraph or two on each of these headings. Call it 'The Preliminary South Carolina Historic Preservation Plan.' If it makes any sense at all, I'll approve, and you can file for your brick-and-mortar projects."[3]

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[3]"Present at Creation," remarks to National Conference of State

The idea that grants funds could be applied to preservation and restoration work on private properties caused some controversy. At the House subcommittee hearing on the proposed legislation in July 1966, Rep. Richard C. White of Texas suggested that the law should preclude a private owner selling his property from retaining any profit attributable to improvements made with grants money. George Hartzog assured him that the Service would promulgate regulations to this effect, requiring that any such profits be reimbursed to the government. A year later, the first draft of the Service's grants manual would have virtually banned assistance to private properties. "No assisted property may be used to conduct a profit making enterprise, or be used as a private residence, or for other private purposes, even though partially or wholly open to the public," it stated. As issued in July 1968, the manual lacked these strictures but required "use and maintenance of the property for historic purposes."[4]

The act itself specified private organizations and individuals among the beneficiaries of project grants and required only that assisted preservation projects be "for public benefit." Bill Murtagh, Jerry Rogers, and others eager to maximize the impact of the program argued for a liberal interpretation of public benefit that would extend to private properties in any use without recovery of profits thereon. They successfully pressed the concept that public benefit was sufficiently

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Historic Preservation Officers, Washington, D.C., March 9, 1981 (transcript at NCSHPO office, Washington, D.C.).

[4]James M. Lambe, "Legislative History of Historic Preservation Act of 1966," National Park Service, 1967, pp. 96-97; "Grants-In-Aid Manual," draft dated July 6, 1967, National Register files; Grants for Historic Preservation: Guide for State Participation (National Park Service, 1968).

realized by the preservation of historic properties, regardless of any subsequent financial gain to their owners.[5]

There was general agreement that public benefit implied at least some public access. Exterior work visible from a public way met this condition. Interior and exterior work not visible from a public way posed a problem. Bernard R. Meyer of the Interior Solicitor's Office thought that interior work should be funded only if a property would regularly be open to the public. Murtagh saw this as inconsistent with the "new preservation," aimed at keeping properties in use rather than maintaining them as museums. A compromise was reached: properties improved by work not visible from a public way would have to be opened to the public at least 12 days a year.[6] This rule appeared in the 1972 edition of the grants manual, which dropped the requirement that assisted properties be used "for historic purposes."

The access provision, where applicable, became part of the legal covenants required of all private grants beneficiaries to protect the public investment in their properties. Attached to the property deeds, the covenants required owners to maintain their properties without substantial alteration for prescribed periods, depending on the amount of the federal contribution. In 1980 the maximum period was reduced from 40 to 20 years. The states were required to monitor compliance.

In practice, private parties did not benefit heavily from grants funding, especially in the early years when the states themselves cornered much of the money. In 1975 Robert Rettig reviewed what he saw as a

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[5]Rogers speech (recorded), Jan. 24, 1984.

[6]Memorandum, Murtagh to Director, Heritage Conservation and Recreation Service, June 1979, National Register files.

changing situation: "Many states saw the grants program initially as a way of financing the restoration of state-owned historic sites, but this approach is being supplanted in most states by a more broadly based grants program involving local governments, individuals, and organizations throughout the state." The trend was fostered by the way in which the annual grants appropriation was apportioned among the states. States had to submit apportionment warrants reporting their capacity to match federal funds. Because a state's apportionment was related to its matching capacity, it was motivated to involve a wide range of National Register property owners to boost its warrant total. Having solicited their involvement, it could not easily revert to keeping all the money for its own properties.[7]

In January 1974 Secretary of the Interior Rogers C. B. Morton advanced "Project Protection" as a balance to "Project Independence," the current thrust to increase domestic energy production and curb dependence on foreign sources. Project Protection would allocate revenues from outer continental shelf oil leases to activities that would aid conservation and fight unemployment. Taking advantage of this planning opportunity, Ernest Connally, assisted by Bill Murtagh and Jerry Rogers, conceived a scheme for spending $400 million per year for 10 years to identify and preserve historic properties.[8]

The plan, written by Rogers, had four major elements:

° a National Historic Resources Conservation Institute--a reconstitu-

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[7]Rettig, "Conserving the Man-Made Environment," Sept. 1, 1975, p. 81.

[8]Project Protection file, Jerry L. Rogers office files.

tion of OAHP that would define and advance professional standards, augment the supply of preservation professionals, dispense professional and financial assistance to the states, foster state preservation plans, and amalgamate the state plans into a nationwide plan;

° a Historic Resources Conservation Fund, supporting the Conservation Institute and funding 50 percent matching grants to the states and National Trust;

° an Endangered Historic Resources Fund, providing 90 percent grants to the states and National Trust for preserving endangered national historic landmarks and funding demonstration projects;

° a Historic Resources Capital Fund, providing 70 percent grants to the states and National Trust to build independent, self-sustaining revolving funds for preservation projects.[9]

The Nixon and Ford administrations ultimately judged inflation a bigger threat than unemployment, and the big spending for Project Protection did not materialize. The historic preservation planning exercise nevertheless had significant consequences. Rogers later recalled its impact:

> It was instantly evident to us that any major infusion of money would require a fundamental revision of our modus operandi. The OAHP would have to rise above the hands-on, or even the eyes-on, approach to preservation work, encouraging--and trusting--others to handle most matters without our direct participation....
>
> The pie-in-the-sky never came, but very much came of the proposal. The philosophy of the OAHP became more firmly fixed upon the notion of a State-based program, with the OAHP gradually converting itself from a participant in project details into a broad overseer, standard-setter, trainer, provider of grants, producer of technical information, and guardian of national historic landmarks.[10]

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[9]Ibid.

[10]Letter to Banks C. Talley, Jr., Dec. 29, 1983, ibid.

OAHP had been reviewing in detail the plans and specifications for every grant-supported project, a practice that brought complaints of nit-picking from some SHPOs and that clearly could not continue as the program grew. Rogers sought to devise a system whereby preservation projects could avoid such scrutiny at the federal level. Federal standards and guidelines for projects, supplemented by technical information, undergirded OAHP's move in this direction. Developed by W. Brown Morton III, Lee Nelson, and Gary Hume, they "took preservation from the province of in-group experts and explained it to ordinary people" in easily understood language, employing a "do and don't" format.[11] With the standards in place, states with demonstrated professional review capability were eligible for "expanded participation" in the grants program after 1976: no longer did they have to submit project plans and specifications for OAHP approval.

The second element of the Project Protection exercise was reflected in the 1976 legislation amending the 1966 act. This enactment established a Historic Preservation Fund in the United States Treasury, patterned on the Land and Water Conservation Fund, which would receive outer continental shelf oil leasing revenues: $24.4 million in fiscal 1977, $100 million in each of fiscal 1978 and 1979, and $150 million in fiscal 1980 and 1981. It also authorized but did not mandate 70 percent federal contributions for state survey and planning work.[12]

This earmarking of revenues at unprecedented levels still did not mean that the dollars would be forthcoming in appropriations. At the

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[11]Interview with Rogers, Feb. 5, 1986.

[12]P.L. 94-422, Sept. 28, 1976.

March 1977 Senate hearings preceding his confirmation as assistant secretary of the Interior in the Carter administration, Robert L. Herbst pledged support for full funding of the grants program in fiscal 1978 at the authorized $100 million level.[13] In fact, the administration requested only $17.5 million for 1978, the same amount appropriated for 1977 and half of what the outgoing Ford administration had sought. Congress responded by appropriating $45 million.

For 1979 the administration requested $45 million and Congress appropriated $60 million. That proved to be the high water mark. While the last two Carter budgets held constant at $45 million, appropriations declined to $55 million in fiscal 1980 and $26 million in 1981.

The Endangered Historic Resources Fund idea bore fruit in fiscal 1978, when $1,000,000 of $2,005,000 held from that year's appropriation in the Secretary's Discretionary Fund went to the National Trust as a matching grant for its use in aiding threatened national historic landmarks. According to Ernest Connally:

> [T]he Endangered Historic Properties Fund originated with us in the National Park Service because of our sense of helplessness when the Chicago Stock Exchange was demolished (we were totally unable to respond for emergency cash in the amount necessary to buy an option or make a down payment) and when I learned that the Trust was able to buy an option on the Wainwright in St. Louis only because Jimmy Biddle [Trust president] was rich enough to give assurance that he would stand behind the purchase if it came to that. To my mind that was not a satisfactory basis for long-term discharge of a public trust. The National Trust was given the flexibility of a private corporation to assist the Federal Government in ways it could not function to save properties of national significance. Hence the idea of an emergency fund, adequate for purchase as a last resort.[14]

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[13]U.S. Congress, Senate, Committee on Energy and Natural Resources, Interior Nominations, Hearings, March 10, 11, 30, 1977 (Washington: Government Printing Office, 1977).

[14]Note to Jerry Rogers, Jan. 3, 1984, Project Protection file.

The Secretary's Discretionary Fund from which this allocation was made was rooted in the demise of criteria that the states were supposed to use in ranking their project funding requests. For most of the decade the SHPOs had been asked to give priority to (1) endangered national historic landmarks, (2) other endangered properties in urban areas whose loss would seriously affect the environment, (3) endangered properties outside urban areas whose loss would seriously affect the environment, and (4) properties not threatened but in need.

Consistent with its decentralizing approach, OAHP had lately dropped the criteria and allowed the states virtual freedom in project selection. Rep. Sidney R. Yates, chairman of the House subcommittee on Interior appropriations, feared this laxity would lead to government funding of projects at "every old jail in the West."[14] In a memorandum defending the new course, Jerry Rogers called the old criteria "somewhat outdated" and observed that they "did not allow for consideration of positive benefits that could accrue from restoration of a property not in clear and present danger." He continued:

> [T]he selection of pivotal buildings for grant assistance must include consideration of many factors, such as the owner's intentions, the financial capability of those who would save the buildings, prevention of undesirable social disruption of urban neighborhoods, the possibility of packaging grants from a wide range of public and private sources, use of public funds as leverage to obtain larger commercial loans, and the amount of influence that either preservation or loss of the building would have upon the surrounding historic resources. Although it is appropriate for the Federal Government to assure that proper professional standards and broad policies are followed in the treatment of historic resources, we strongly recommend continuance of the philosophy that most decisions should be made by those who are closest to the problems.[15]

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[14]Cited in memorandum, Secretary Cecil D. Andrus to Assistant Secretary for Fish and Wildlife and Parks, July 26, 1977, Rogers files.

[15]Memorandum, Acting Director Ira J. Hutchison, NPS, to Assistant

For fiscal 1978, OAHP developed six "national objectives" and asked the SHPOs to spend at least half their acquisition and development grants on projects meeting one or more of them. They were broad enough to place little constraint on the states' discretion. The first objective was revitalization of National Register districts through public/private cooperation; last came national historic landmark preservation. Here the Secretary's Discretionary Fund came into play, to serve the federal interest in properties of national significance. The balance of the fund not going to the National Trust for endangered landmarks went for "challenge grants" to special projects of demonstration value.

The National Historic Preservation Act Amendments of 1980 included specific authority for the discretionary fund and specified that the Secretary could make direct grants from it for threatened landmarks, demonstration projects, preservation training, and the prevention of displacement from historic districts. Sharply reduced appropriations in succeeding years precluded such grants, however, and the Endangered Properties Fund arrangement with the National Trust was discontinued in 1983.

State revolving funds, the final Project Protection element, were attempted in a few states. Absent the hoped-for dollars, the concept was not pressed heavily.

Project grants became subject to other special emphases and prohibitions at various times. In 1977 the assistant secretary of the Interior for program, budget, and administration questioned the propriety of grants

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Secretary, Fish and Wildlife and Parks, Aug. 19, 1977 (written by Rogers), Rogers files.

money going to state capitols and other state and local government buildings.[16] The Interior appropriations acts for fiscal 1979 and 1980 reflected this concern by denying funds to state and local government buildings used for government purposes. The 1979 act also earmarked $5,000,000 of that year's appropriation for the preservation of ships and other historic maritime resources.

SHPOs voiced displeasure with these legislative directions. While some objected to the restriction on funding government buildings, more expressed concern about the special provision for maritime preservation. This earmarking reduced the amount available for general apportionment, favored an aspect of preservation unimportant in many states, and departed from the concept that the states should set the priorities.[17]

After signing a bill establishing San Antonio Missions National Historical Park in November 1978, President Carter stated his opposition to "the use of Federal funds to rehabilitate or restore structures that remain active parish churches." He was referring to park development at the San Antonio missions, but his statement precipitated a review of grants to religious properties under the National Historic Preservation Act. As of mid-1979, 181 such properties had received $3,789,757 in grants. The Solicitor's Office opined that this support was probably constitutional, but with reservations. The grants guidelines were amended to stipulate that benefiting churches had to be on the National Register for reasons other than religious significance (already required by the

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[16]Memorandum, Andrus to Assistant Secretary, Fish and Wildlife and Parks, July 26, 1977.

[17]Surveys and Investigations Staff, "A Report to the Committee on Appropriations, U.S. House of Representatives, on Federal Historic Preservation Efforts," February 1979, p. 30.

Register criteria) and that grants could support work only in areas accessible to the general public. A new rule in 1984 prohibited any assistance to active churches, but by that time the issue was academic.[18]

It became so because acquisition and development project grants ceased altogether in fiscal 1982. Their termination was influenced by several factors, including deficit reduction pressures and the use of tax incentives as an alternate means of supporting preservation.

A 1979 staff report of the House Appropriations Committee observed that as the National Register had grown, the amount of money allocated per project had shrunk. Noting the increased workload of the SHPOs in reviewing federal undertakings under Section 106 and projects proposed for tax benefits, it suggested that grants funding might better be devoted to the survey and planning functions that supported the state staffs. These basic functions were less likely to proceed without grants than were bricks-and-mortar projects.[19]

The National Historic Preservation Act Amendments of 1980 retained the authorization for project grants and included provisions to facilitate their administration. The 1966 act had been interpreted to require at least a 50 percent match from nonfederal sources for each project. Now a state could aggregate its projects, enabling some to receive funding with a lesser contribution. The legal recognition granted the state programs in the 1980 Amendments also enabled the Park Service to make programmatic

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[18]Memorandum, Carter to Secretary of the Interior, Nov. 17, 1978, Rogers files; memorandum, Stephen D. Newman to Jerry Rogers, July 24, 1979, Ernest A. Connally office files; memorandum, Associate Solicitor James D. Webb to Director, HCRS, Mar. 6, 1979, ibid.; personal communication from Stephen D. Newman, May 5, 1986.

[19]"Report on Federal Historic Preservation Efforts," pp. vii-ix.

or consolidated grants to the states without the need for applications detailing every project. At the same time, the new legislation displayed favoritism to surveys by mandating 70 percent federal sharing in their costs.

The 1980 Amendments continued the annual addition of $150 million to the Historic Preservation Fund from fiscal 1982 through 1987, but appropriations stayed close to the 1981 level of $26 million, about $5 million of which went annually to the National Trust. Project grants were no longer deemed viable at this funding level with the great number of properties now eligible for them. Congress therefore halted this aspect of the program beginning with the 1982 appropriation, after some 7,700 individual grants had been awarded.[20]

Among the recommendations of the Special Committee on Historic Preservation in With Heritage So Rich was "income tax deductibility to private owners of registered historic properties for preservation and restoration expenditures within appropriate limitations."[21] This idea of fostering preservation though the Internal Revenue Code found no place in the 1966 act or its amendments (where it would not have belonged in any case), but it would have a profound effect on the national preservation program beginning with tax legislation enacted a decade later.

Following the Special Committee's report, the tax benefit concept next arose in 1970 within the Council on Environmental Quality task force

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[20]In fiscal 1983 $25 million was provided for preservation projects under emergency jobs legislation (P.L. 98-8, Mar. 24, 1983). This special appropriation was not repeated.

[21] With Heritage So Rich (New York: Random House, 1966), p. 209.

whose recommendations led to Executive Order 11593 (see page 37). President Nixon's 1971 environmental message stemming from these recommendations proposed more favorable tax treatment for commercial rehabilitation of historic properties, enabling their owners to derive the same advantages from rehabilitation as the tax code allowed for new construction. In 1973 Sen. J. Glenn Beall, Jr., of Maryland introduced legislation to install such a provision in the tax code. With the effective lobbying of Preservation Action, formed in 1974, Congress included Beall's provision in the Tax Reform Act of 1976.[22]

The preservation incentives in this act were expanded and altered in subsequent tax legislation, notably the Economic Recovery Tax Act of 1981, which offered a 25 percent investment tax credit for the substantial rehabilitation of historic commercial, industrial, and rental residential buildings. In general, realization of these tax benefits required Park Service certification (1) that the structure to be rehabilitated was listed individually in the National Register or contributed to the significance of a historic district in or eligible for the Register and (2) that the rehabilitation work was consistent with the historic character of the structure. By 1986 the Service had approved more than 15,600 projects with a total rehabilitation value likely to exceed $10 billion.

The preservation tax incentives had several consequences beyond these impressive figures, some of which have been alluded to previously. Among them:

° The rate of National Register nominations increased as property owners sought to become eligible for the benefits. This increase and the

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[22]S. 2347, 93rd Congress, Aug. 3, 1973; P.L. 94-455, Sec. 2124, Oct. 4, 1976.

certification requirements heightened the workload of Park Service staff and state staffs, which also became involved in the certification process.

° The need to certify numerous rehabilitation projects planned and executed by parties often inexperienced in preservation work greatly stimulated the development, dissemination, and application of standards, guidelines, and supplementary technical information. The Service conditioned project certification directly on compliance with "The Secretary of the Interior's Standards for Rehabilitation," which encouraged compatible uses, retention of original character and materials, care in surface cleaning, protection of affected archeological resources, and harmonious and reversible contemporary additions. Information was shared both ways: experience with numerous projects revealed common errors and new solutions to problems that the Service could then publicize in bulletins called "Interpreting the Standards" and "Preservation Tech Notes." The tax incentive program won one of the first Presidential Awards for Design Excellence in 1985 for the system by which the high quality of rehabilitation it fostered was achieved.

° The increased workload necessitated and the standards enabled greater program decentralization to the state preservation offices, which were closest to the project planners and project areas and thus best able to advise and assist with certification.

° Preservation became very much a part of the economic development mainstream. Developers, most often at odds with preservationists in former years, now became leading players in the business. Preservation by developers necessarily focused on properties that could be made to generate commercial revenue. As a result some classes of property, such as owner-occupied residences and archeological sites, did not benefit from

the tax provisions, while some monumental buildings that might better have been preserved or restored for public purposes underwent commercial rehabilitation.[23]

° The disincentives for demolition of National Register buildings in the 1976 tax act stimulated adoption of the owner objection provision in the National Historic Preservation Act Amendments of 1980 (see pages 46-50). This made Register listing (although not eligibility) officially subject to a non-professional consideration and complicated the nomination process.

° Envisioned as a supplement to the acquisition and development project grants, the tax benefits became a justification for ending them and an argument for ending the survey and planning grants to the states as well. Beginning with its fiscal 1982 budget, the Reagan administration requested no Historic Preservation Fund appropriations to the states. Congress declined to "zero out" the grants program but, as noted, halted project grants and retained a much lower appropriation level for survey and planning grants only.

Not surprisingly, SHPOs protested the reduced funding and the administration's efforts to end the grants program altogether. They argued, correctly, that the tax benefits were no help to non-revenue-producing properties. They also contended that they should be compensated for the staff work they did in support of the national program: nominating properties to the National Register, reviewing and commenting on federal agency undertakings under Section 106, reviewing and commenting on rehabilitation projects for federal tax benefits. "Although the funding

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[23]Interview with Ernest A. Connally, Apr. 21, 1986.

allocated to this program has decreased considerably from what was allocated in the late 1970s, the federal government, i.e., the National Park Service, has increased the requirements and demands on the states dramatically beyond what we coped with in the late 1970s," the Kansas SHPO complained to Rep. John F. Seiberling. "There seems to be some perverse logic at work that as the funding drops the demands on the states must increase."[24]

The administration took the position that grants had been justified to get the state historic preservation offices and programs going, but because preservation most benefited the states and localities, they should now be willing to continue these programs without direct financial aid. From this perspective, the states were essentially serving themselves in nominating properties to the Register and reviewing federal undertakings and tax act projects within their jurisdictions. An April 1986 letter to the governor of Virginia summarized this position:

> Although there is no question that the historic preservation program in Virginia and other States is worthwhile, the Administration believes that Historic Preservation Fund grants to the States are no longer critical to ensure that preservation activities continue. Over the past 19 years, the Federal Government has committed over $415 million in grants..., plus several million dollars in technical support, to help establish a network of State preservation programs. These State programs now function effectively and should be able to continue to do so with other than Federal assistance. It is the proper responsibility of individual States and Federal agencies to define their program interests and responsibilities, identify their resource needs and carry out their programs. The variety of State activities, including survey and evaluation of resources, nomination of properties to the National Register, interpretive and educational programs, and rehabilitation of deteriorating neighborhoods and commercial areas, clearly have a purpose and value beyond fulfillment of federally mandated responsibilities. Therefore, the cost of State programs should be borne by the States. The tax incentives provided under the Economic Recovery Tax Act of 1981 for preserving commercial

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[24]Letter, Joseph W. Snell to Seiberling, Oct. 22, 1985, copy in History Division.

> properties are sufficient Federal support for historic preservation development work and properly define the financial assistance role of the Federal Government in historic preservation....[25]

Accustomed to federal aid, state program participants were unlikely to accept this argument. Most surely realized, however, that no administration would favor substantial grants--nor would Congress vote more than token appropriations--so long as deficit reduction remained a paramount national objective. For better or for worse, it would fall to the states and localities to weigh the social and economic benefits they derived from preservation and decide whether and to what extent they wished to offset the decrease and possible disappearance of federal money. Success in obtaining state and local funding would come to those best able to portray the benefits of preservation at these levels.

In a 1986 article prepared for The Public Historian, Jerry Rogers suggested one approach that preservationists might take in lobbying their state legislatures:

> Perhaps the most overlooked contribution of the tax incentive program is its positive effect upon State and local revenues. Rehabilitation is labor-intensive. Money going home in workers' paychecks gets turned over again in the local economy for food, clothing, and shelter, rather than sent to distant cities or foreign lands for construction materials. Rehabilitated properties often climb to high assessed values from previously low or even negative values. State and local coffers benefit from increased income taxes, sales taxes, and real estate taxes. One study indicated that the State of New York gained over $9 million in annual revenue from the rehabilitation tax incentives. If this is accurate, New York State could spend five or six million dollars per annum on its own State Historic Preservation Office and still realize an excellent profit. One can only wonder why so little attention has been devoted to this opportunity by the constituencies of State and local preservation programs.[26]

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[25]Letter, Acting Assistant Secretary Susan Reece to Gov. Gerald L. Baliles, Apr. 7, 1986, Preservation Assistance Division files.

[26]"The National Register as a Fulcrum for Historic Preservation in America," June 1986 draft, copy in History Division.

The tax incentives, of course, were also vulnerable to termination. They represented a substantial federal "tax expenditure" in terms of foregone revenues, and they were a complication and loophole in the tax code--both negatives when deficit reduction and tax simplification vied for top billing on the nation's domestic policy agenda. Although the Reagan administration favored the tax incentives, the tax reform package it advanced in 1985 sacrificed them to the goal of simplification. Preservationists lobbied successfully to retain somewhat reduced benefits in the tax reform bill approved by a House-Senate conference committee and embraced by the administration in August 1986. The survival of preservation incentives in the new tax legislation was clear evidence of their bipartisan popularity.

PROTECTING PROPERTIES

Among the most frequently cited rationales for passage of the National Historic Preservation Act was the destruction of historic resources wrought by urban renewal, highway construction, water impoundments, and other projects reshaping the landscape in the postwar period. A major purpose of identifying and registering historic properties was to enable them to be considered by federal agencies in their project planning.

The requirement for such consideration was specified in Section 106 of the 1966 act:

> The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under title II of this Act a reasonable opportunity to comment with regard to such undertaking.

The act established the Advisory Council with 17 members: the secretaries of the Interior, Housing and Urban Development, Commerce, and Treasury; the attorney general; the administrator of the General Services Administration; the chairman of the National Trust for Historic Preservation; and 10 persons appointed by the President from outside the federal government. Amendments to the act subsequently enlarged and altered the Council's membership. Its current composition, specified in the 1980 amendments, may be seen in the amended version of the act reproduced in

the appendix.

The language of Section 106 was amended once, in 1976, to direct agencies to consider the effects of their undertakings on properties eligible for the National Register as well as those actually listed (see page 39). But the responsibility and authority granted by the provision remained quite limited.

In the first place, Section 106 applied only to federal undertakings. It had no bearing on actions by state and local governments and private organizations and individuals that were not supported or approved by the federal government. Broader application would have gone contrary to the American federal system, which reserves control over other-than-federal land use to the states and their political subdivisions. It was also interpreted to apply only where federal involvement in an undertaking was subject to agency discretion. When an agency disbursed block grants to state or local governments for a range of functions and had no role in deciding the particular projects or activities to be carried out with this aid, for example, the projects could proceed without reference to Section 106.

In the second place, agencies needed only to "take into account" the effects of their undertakings on historic properties. They did not have to refrain from damaging or destroying them. The absence of any positive requirement for protection contrasted with Section 4(f) of the Department of Transportation Act--approved the same day as the National Historic Preservation Act--which forbade the Secretary of Transportation from approving "any program or project which requires the use of any land from a...historic site unless (1) there is no feasible and prudent alternative ...and (2) such program includes all possible planning to minimize

harm to such...historic site resulting from such use."[1]

In the third place, the Advisory Council was to be afforded only "a reasonable opportunity to comment" on agency undertakings. It had no authority to enjoin or regulate them.

On its face, then, this key protective provision of the 1966 act appeared bootless, neither encouraging agencies to preserve or spare historic properties nor requiring more than perfunctory procedural compliance. When its content was viewed in its context, however, its thrust was clear. The preamble to the act was a positive call for preservation. The duties of the Advisory Council specified in the act indicated that the Council was expected to play an advocacy role for preservation. The Senate committee report on the version of the bill subsequently passed by the Senate said of Section 106, "It is intended to insure that the Federal agencies will not work at cross purposes with the goals of historic preservation and provides for a meaningful review of Federal or federally assisted projects...."[2] Thus, although the provision did not mandate preservation, it sought to insure that agencies would no longer act with disregard for this national objective.

Section 106 would clearly not be self-enforcing. Compliance would require the awareness and cooperation of all federal agencies whose

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[1]P.L. 89-670, Oct. 15, 1966.

[2]S. Rept. 1363, 89th Congress, July 7, 1966, p. 7. The Senate-passed bill specified that no federal funds could be spent on a project affecting a National Register property until 60 days after the responsible agency had reported to the Advisory Council. The House amended the bill to substitute "a reasonable opportunity to comment" for the 60-day period, change "project" to "undertaking," and include federal licensing within the scope of Section 106.

activities had the potential to affect historic sites, and it would require establishment of a procedural mechanism to handle a potentially enormous volume of agency requests for comment.

The National Park Service took immediate steps to involve other agencies in its planning to implement the 1966 act. A representative of the Federal Highway Administration attended the first meeting of Bob Utley's task force on November 22. This agency, attached to the new Department of Transportation, needed to be informed of historic sites so that it could consider them under Section 4(f) of the DOT act as well as Section 106. The Department of Housing and Urban Development was another early collaborator, represented by Dwight F. Rettie, director of its Division of Land Development. Rettie, who later moved to the Park Service, served with notable influence as the HUD secretary's initial designee on the Advisory Council.

Following consultation with the Park Service, the National Trust, and other interested parties, the White House announced the 10 citizen appointments to the Council on March 1, 1967. Among them were S. K. Stevens, director of the Pennsylvania Historical and Museum Commission, appointed chairman; Albert Rains, who had chaired the Special Committee on Historic Preservation that produced With Heritage So Rich; Lawrence Halperin, San Francisco landscape architect; Christopher Tunnard, professor of city planning at Yale; Russell W. Fridley, director of the Minnesota Historical Society; and Elizabeth Stevenson Ives, a North Carolina preservationist and sister of Adlai E. Stevenson. The Council met twice that year but considered no Section 106 cases.

It was immediately apparent that case review and comment would be largely a staff function. A body assembling a few times a year was ill

suited to consider any substantial number of cases in a timely fashion. During 1967 Executive Secretary Bob Garvey and OAHP staff handled consultations on 16 agency undertakings whose effects on Register properties were minimal or readily mitigated. Knowing the importance of precedent, Garvey wanted to establish an early record of successful staff-level negotiation and reserve involvement of the Council itself for cases representing major issues that also appeared capable of satisfactory resolution.

The Council considered the first such case at its third meeting, in February 1968. The agency was the Department of Health, Education, and Welfare; its undertaking was approval of a grant requested by Georgetown University for construction of a heating plant in the Georgetown Historic District of Washington, D.C., a national historic landmark. The Council commented that the location originally proposed for the plant would have had an adverse effect on the district but that the alternate location chosen since was acceptable.[3]

That May the Council met in Albany, New York, on the second case brought before it. The Atomic Energy Commission proposed to license a nuclear generating plant near Saratoga National Historical Park, a National Park System area in the National Register. Although the plant would have no physical impact on the historic battlefield, the Council found that it would cause an adverse visual impact and recommended denial of the license.[4] Faced with this and other opposition, the Niagara Mohawk Power Corporation subsequently decided to build elsewhere.

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[3]Advisory Council minutes, National Register files.

[4]Ibid.

The most important early case to reach the Council concerned the landmark Vieux Carré Historic District in New Orleans. The Federal Highway Administration had approved initial plans for a riverfront expressway through the district in January 1966, nine months before enactment of the National Historic Preservation Act. More detailed planning and funding decisions remained to be made, however, causing the Council to assert jurisdiction over the undertaking. Meeting on the case in early 1969, it found that the expressway would have a substantial adverse effect on the historic character of the district. That summer Secretary of Transportation John A. Volpe decided not to approve funds for the project, citing its effect on the district and the excessive cost of depressing the road to mitigate the adversity.[5]

The Vieux Carré expressway case set the precedent for Council involvement even when an undertaking might have originated before the 1966 act, as long as the responsible agency retained discretion in proceeding with it, and it addressed a major project in a prominent locale. "That was the first big success of the Advisory Council...," Ernest Connally said later. "Volpe made that courageous decision, and that did more to set the Council on the right track and to show that it had influence and integrity than anything."[6]

There were failures too, of course. A developer obtained a federally guaranteed loan for a 12-story apartment building in the landmark Savannah Historic District notwithstanding the Council's objections. The Council

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[5]Digest of Cases, 1967-1973 (Washington: Advisory Council on Historic Preservation, 1973).

[6]Connally interview by Charles B. Hosmer, Jr., July 28, 1981, transcript pp. 132, 136, Eastern National Park and Monument Association.

failed to thwart an intrusive observation tower adjoining Gettysburg National Military Park, constructed after the Park Service granted access to it over park land to induce its builder to abandon an even more prominent spot. During the first six years more than 400 undertakings underwent staff review, but many more that should have been referred for consideration were not.[7]

Only 26 of these went to the Council itself. The remainder were handled by OAHP staff acting on behalf of the Council, in accordance with procedures published with the first publication of the National Register in the February 25, 1969, Federal Register. The introduction to the procedures made clear that the Council expected to comment "in only the most complex situations." The procedures thus placed the major burden of consultation with agencies on OAHP, involving the state liaison officers in the process as well.

First, agencies were asked to consult the National Register to see whether any listed properties might be affected by their undertakings. They were then to apply the "criteria for effect," which defined "effect" as occurring "when any condition of the undertaking creates a change in the quality of the historical, architectural, archeological, or cultural character that qualified the property...for listing in the National Register." Adverse effect could result from "(a) Destruction or alteration of all or part of a property; (b) Isolation from or alteration of its surrounding environment; (c) Introduction of visual, audible, or atmospheric elements that are out of character with the property and its setting."[8]

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[7]Digest of Cases.

[8]"Protection of Properties in the National Register of Historic Places," Federal Register, Feb. 25, 1969, p. 2582.

If an agency determined that there was no effect, it could proceed with the undertaking. If it found an effect, it was to consult with OAHP and the SLO to decide whether the effect was adverse. If it was not, the undertaking could proceed. If it was, the parties were to "select and agree upon a prudent and feasible alternative to remove the adverse effect," enabling the undertaking to proceed. The Council was to be notified and given an opportunity to comment only if the parties could not agree upon such an alternative. It retained discretion over whether it would in fact comment. It also announced its intention "to exert its advisory prerogatives by commenting to agencies in certain special situations even though written notice of effect has not been received."[9]

The slow initial progress of National Register nominations hampered the effectiveness of the Advisory Council and Section 106. Agencies could ignore the great mass of properties that were clearly eligible for the Register but had not yet been listed. As noted previously (pages 37-39), Executive Order 11593 of May 13, 1971, and the 1976 amendments to the National Historic Preservation Act included provisions to plug this protection gap by requiring agencies to identify and nominate apparently eligible properties under their jurisdictions and giving those found eligible the same review consideration as listed properties.

Executive Order 11593 also elaborated on federal agency responsibilities for preservation in much more explicit and positive terms than had the 1966 act. Section 1 was a strong policy statement:

> The Federal Government shall provide leadership in preserving, restoring, and maintaining the historic and cultural environment

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[9]Ibid.

> of the Nation. Agencies of the executive branch...shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and (3) in consultation with the Advisory Council on Historic Preservation..., institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

Section 3 of the executive order set forth responsibilities of the Secretary of the Interior (in effect, the Park Service). He was to assist agencies with their property surveys and nominations; expedite action on nominations of properties proposed for sale, transfer, demolition, or substantial alteration; and develop and disseminate to agencies "information concerning professional methods and techniques for preserving, improving, restoring and maintaining historic properties," among other duties.

The executive order was largely superseded by the 1980 amendments to the National Historic Preservation Act. A new Section 110 of the act specified federal agency responsibilities for identifying and nominating properties to the National Register, using available historic buildings, carrying out their programs in accordance with the purposes of the act, and "to the maximum extent possible, undertak[ing] such planning and actions as may be necessary to minimize harm" to national historic landmarks. Other new provisions included one enabling agencies to lease out historic properties under their jurisdictions for purposes consistent with their preservation and retain the proceeds to defray the costs of their maintenance. By 1986 the Park Service had used this authority to lease out 10 structures whose lessees made improvements

valued at some $4.4 million.

The executive order and 1980 amendments further stimulated the Service's development and issuance of preservation standards, guidelines, and technical information. The amendments directed the Secretary of the Interior to promulgate guidelines for agency responsibilities under Section 110 and professional standards for the preservation of historic properties in federal ownership. Incorporating material developed previously in other contexts, the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" was published in the Federal Register on September 29, 1983, and "Guidelines for Historic and Archeological Resource Management: Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act" was published in draft form on March 10, 1986.

Expanding on its initial procedures, the Advisory Council published progressively more detailed procedures in the February 28, 1973, and January 25, 1974, issues of the Federal Register. The 1974 version was given added force by being formalized as regulations. It addressed agency compliance with pertinent portions of Executive Order 11593, and it added two more criteria of adverse effect: "(d) Transfer or sale of a federally owned property without adequate conditions or restrictions regarding preservation, maintenance, or use; and (e) Neglect of a property resulting in its deterioration or destruction."

As noted in the first chapter, the 1976 amendments to the National Historic Preservation Act freed the Advisory Council from reliance on National Park Service staff. Its executive director would no longer be the Service director or his designee but would be appointed by the Council chairman. Until this emancipation Bob Garvey had been required to serve

two masters: his superiors in the Service and Interior Department and the Council chairman appointed by the President. This posed a potential for conflict when cases involving Service and Interior undertakings came before the Council. Director Ronald Walker delegated the executive directorship to Garvey after the Gettysburg tower case spotlighted this problem, but Garvey remained a Service employee. Aside from the conflict of interest issue, he found that his voice was not adequately heard in pleading the Council's budget through Service and Interior channels. To the surprise of his superiors, he and Council chairman Clement M. Silvestro successfully engineered independence in 1976.[10]

Because the Advisory Council was no longer staffed by the Park Service thereafter, the Council's activities beyond that date warrant only brief mention here. Its 1974 regulations were superseded in 1979 by still more refined procedures that covered, among other matters, programmatic memorandums of agreement with agencies--a mechanism for consolidating Section 106 compliance on a range of similar agency undertakings. A 1986 report prepared by the Service identified "a consistent trend in the development of Council regulations away from an advisory role, toward a prescriptive, regulatory role"[11]--a trend that occasioned some opposition from federal agencies under the Reagan administration.

The dissemination and use of preservation standards and new Council regulations being readied in 1986 were expected to reduce burdensome aspects of the compliance process. "The Council's commenting process has been restructured to relate the degree of Council involvement to the

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[10]Telephone interview with Garvey, July 22, 1986.

[11]The Secretary of the Interior's 20th Anniversary Report on the National Historic Preservation Act, 1986, p. 92.

complexity of each case and the extent of conflict," the Council reported of its proposed regulations. "Agencies are encouraged to consult directly with the State Historic Preservation Officer in routine cases to develop ... sign a Memorandum of Agreement, which the Council then reviews." On the other hand, the regulations prescribed greater Council involvement where national historic landmarks were affected, in line with language in the 1980 amendments (see page 44).[12]

In a 1975 report the Council declared that, relative to property identification and registration, "the current protective system in the national historic preservation program is the least satisfactory part of the program." Many federal undertakings affecting historic properties had proceeded without reference to Section 106. Other undertakings were brought to the Council's attention too late for its comments to have any effect. Lacking veto or approval power, the Council was severely limited in its ability to influence agency decisions. Even so, it reported that "[a] broad administrative interpretation of the statutory term 'undertaking,' a number of favorable court decisions, and an increasing awareness of Federal preservation responsibilities have contributed to a continually improving record of effectiveness for the Section 106 review process."[13] As preservation came more and more into the mainstream in succeeding years, rising to nigh-universal attention, the kind of

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[12]Advisory Council on Historic Preservation, Report to the President and the Congress of the United States, 1985 (Washington: Advisory Council on Historic Preservation, 1986), p. 8.

[13]Advisory Council on Historic Preservation, The National Historic Preservation Program Today (Washington: Government Printing Office, 1976), pp. 37-39.

heedless destruction that had prompted the National Historic Preservation Act became less and less common.

AN APPRAISAL

A law like the National Historic Preservation Act is only as good as its execution. It needs the bureaucracy to put it into effect and the additional congressional commitment of appropriations to achieve its purposes. Adequate appropriations and effective implementation are unlikely to occur without the continuing involvement of the constituency behind the law and forceful administrative leadership.

Execution of the 1966 act and its amendments has not been without difficulty and occasional default. The authorities and directives in the law suggested a larger commitment than Congress and successive administrations have been willing to meet. As has been seen and as the funding history table in the appendix graphically summarizes, grants-in-aid appropriations in most years have been small fractions of the amounts authorized. Perceptions of inadequate National Park Service and Interior Department support for the preservation program and recent administration efforts to end grants altogether have fueled complaints and calls for relocation of the program. On occasion, Federal agencies have violated Section 106 with impunity. The 1980 amendments commanded the Secretary of the Interior, with great specificity, to establish and maintain a program of insured loans for preserving National Register properties; but Congress appropriated no money for this program and it has never been implemented.

Many other trials and shortcomings relative to execution of the act could be cited. To conclude with such a litany, however, would grossly

misrepresent the "big picture" of what the act has wrought. That picture is aptly summarized in the preface of The Secretary of the Interior's 20th Anniversary Report on the National Historic Preservation Act:

> [M]uch of what was sought through enactment of the National Historic Preservation Act has been accomplished. These accomplishments are objective and concrete; even the casual observer is aware of the upgrading and rehabilitation of historic properties and the broadening of citizen interest in historic preservation that has taken place throughout the United States. With few exceptions, Federal agencies now thoughtfully consider cultural resource values. Guidelines, standards, and technical materials defining good preservation practice are generally available. As a people, the quality of our lives has benefitted from historic preservation through appreciation of our history, through the beautification of our cities and rural landscapes, and through the creation of jobs and the economic revitalization of chronically impoverished areas. The verdict is in; historic preservation is a winning proposition.[1]

Only those who fail to place preservation in historical perspective and appreciate how far it has come in the last 20 years would disagree.

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[1]p. 3.

APPENDIX

Public Law 89-665
89th Congress, S. 3035
October 15, 1966

An Act

80 STAT. 915

To establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Historic properties. Preservation program established.

The Congress finds and declares—

(a) that the spirit and direction of the Nation are founded upon and reflected in its historic past;

(b) that the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(c) that, in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation; and

(d) that, although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

TITLE I

Buildings and objects, etc. Expansion and maintenance of National Register.

Grants to states.

National Trust for Historic Preservation.

16 USC 468-468d.

SEC. 101. (a) The Secretary of the Interior is authorized—

(1) to expand and maintain a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture, hereinafter referred to as the National Register, and to grant funds to States for the purpose of preparing comprehensive statewide historic surveys and plans, in accordance with criteria established by the Secretary, for the preservation, acquisition, and development of such properties;

(2) to establish a program of matching grants-in-aid to States for projects having as their purpose the preservation for public benefit of properties that are significant in American history, architecture, archeology, and culture; and

(3) to establish a program of matching grant-in-aid to the National Trust for Historic Preservation in the United States, chartered by act of Congress approved October 26, 1949 (63 Stat. 927), as amended, for the purpose of carrying out the responsibilities of the National Trust.

(b) As used in this Act—

"State."

(1) The term "State" includes, in addition to the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

"Project."

(2) The term "project" means programs of State and local governments and other public bodies and private organizations and individuals for the acquisition of title or interests in, and for the develop-

ment of, any district, site, building, structure, or object that is significant in American history, architecture, archeology, and culture, or property used in connection therewith, and for its development in order to assure the preservation for public benefit of any such historical properties.

"Historic preservation." (3) The term "historic preservation" includes the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, or culture.

"Secretary." (4) The term "Secretary" means the Secretary of the Interior.

Conditions for grants. SEC. 102. (a) No grant may be made under this Act—

(1) unless application therefor is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897);

16 USC 460l-4 note.

(3) for more than 50 per centum of the total cost involved, as determined by the Secretary and his determination shall be final;

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

(5) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

Waiver. (b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States, in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory to the Secretary.

(c) No State shall be permitted to utilize the value of real property obtained before the date of approval of this Act in meeting the remaining cost of a project for which a grant is made under this Act.

Apportionment. SEC. 103. (a) The amounts appropriated and made available for grants to the States for comprehensive statewide historic surveys and plans under this Act shall be apportioned among the States by the Secretary on the basis of needs as determined by him: *Provided, however*, That the amount granted to any one State shall not exceed 50 per centum of the total cost of the comprehensive statewide historic survey and plan for that State, as determined by the Secretary.

Limitation.

(b) The amounts appropriated and made available for grants to the States for projects under this Act for each fiscal year shall be apportioned among the States by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans.

The Secretary shall notify each State of its apportionment, and the amounts thereof shall be available thereafter for payment to such State for projects in accordance with the provisions of this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given, and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection.

Coordination with other Federal programs.

SEC. 104. (a) No grant may be made by the Secretary for or on account of any survey or project under this Act with respect to which financial assistance has been given or promised under any other Federal program or activity, and no financial assistance may be given under any other Federal program or activity for or on account of any survey or project with respect to which assistance has been given or promised under this Act.

(b) In order to assure consistency in policies and actions under this Act with other related Federal programs and activities, and to assure coordination of the planning acquisition, and development assistance to States under this Act with other related Federal programs and activities, the President may issue such regulations with respect thereto as he deems desirable, and such assistance may be provided only in accordance with such regulations.

Records.

SEC. 105. The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

SEC. 106. The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Exemptions.

SEC. 107. Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

Appropriation.

SEC. 108. There are authorized to be appropriated not to exceed $2,000,000 to carry out the provisions of this Act for the fiscal year 1967, and not more than $10,000,000 for each of the three succeeding fiscal years. Such appropriations shall be available for the financial assistance authorized by this title and for the administrative expenses of the Secretary in connection therewith, and shall remain available until expended.

TITLE II

Advisory Council on Historic Preservation, membership.

SEC. 201. (a) There is established an Advisory Council on Historic Preservation (hereinafter referred to as the "Council") which shall be composed of seventeen members as follows:

(1) The Secretary of the Interior.
(2) The Secretary of Housing and Urban Development.
(3) The Secretary of Commerce.
(4) The Administrator of the General Services Administration.
(5) The Secretary of the Treasury.
(6) The Attorney General.
(7) The Chairman of the National Trust for Historic Preservation.

(8) Ten appointed by the President from outside the Federal Government. In making these appointments, the President shall give due consideration to the selection of officers of State and local governments and individuals who are significantly interested and experienced in the matters to be considered by the Council.

(b) Each member of the Council specified in paragraphs (1) through (6) of subsection (a) may designate another officer of his department or agency to serve on the Council in his stead.

Terms of office.

(c) Each member of the Council appointed under paragraph (8) of subsection (a) shall serve for a term of five years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of from one to five years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not less than one nor more than two of them will expire in any one year.

(d) A vacancy in the Council shall not affect its powers, but shall be filled in the same manner as the original appointment (and for the balance of the unexpired term).

Chairman, selection.

(e) The Chairman of the Council shall be designated by the President.

(f) Eight members of the Council shall constitute a quorum.

Duties.

SEC. 202. (a) The Council shall—

(1) advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;

(2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation; and

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation.

Report to President and Congress.

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations.

Other Federal agencies, cooperation.

SEC. 203. The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of this title; and each such department, bureau, agency, board, commission, office, independent establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

Compensation.

SEC. 204. The members of the Council specified in paragraphs (1) through (7) of section 201(a) shall serve without additional compen-

sation. The members of the Council appointed under paragraph (8) of section 201(a) shall receive $100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

Executive Director.

SEC. 205. (a) The Director of the National Park Service or his designee shall be the Executive Director of the Council. Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior: *Provided*, That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 46e) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 665 (g)) shall apply to appropriations of the Council: *And provided further*, That the Council shall not be required to prescribe such regulations.

68 Stat. 483.

Personnel.

(b) The Council shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949.

Ante, p. 288.

(c) The Council may also procure, without regard to the civil service laws and the Classification Act of 1949, temporary and intermittent services to the same extent as is authorized for the executive departments by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a), but at rates not to exceed $50 per diem for individuals.

60 Stat. 810.

(d) The members of the Council specified in paragraphs (1) through (6) of section 201(a) shall provide the Council, on a reimbursable basis, with such facilities and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such facilities and services are requested by the Council and are otherwise available for that purpose. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties.

Approved October 15, 1966.

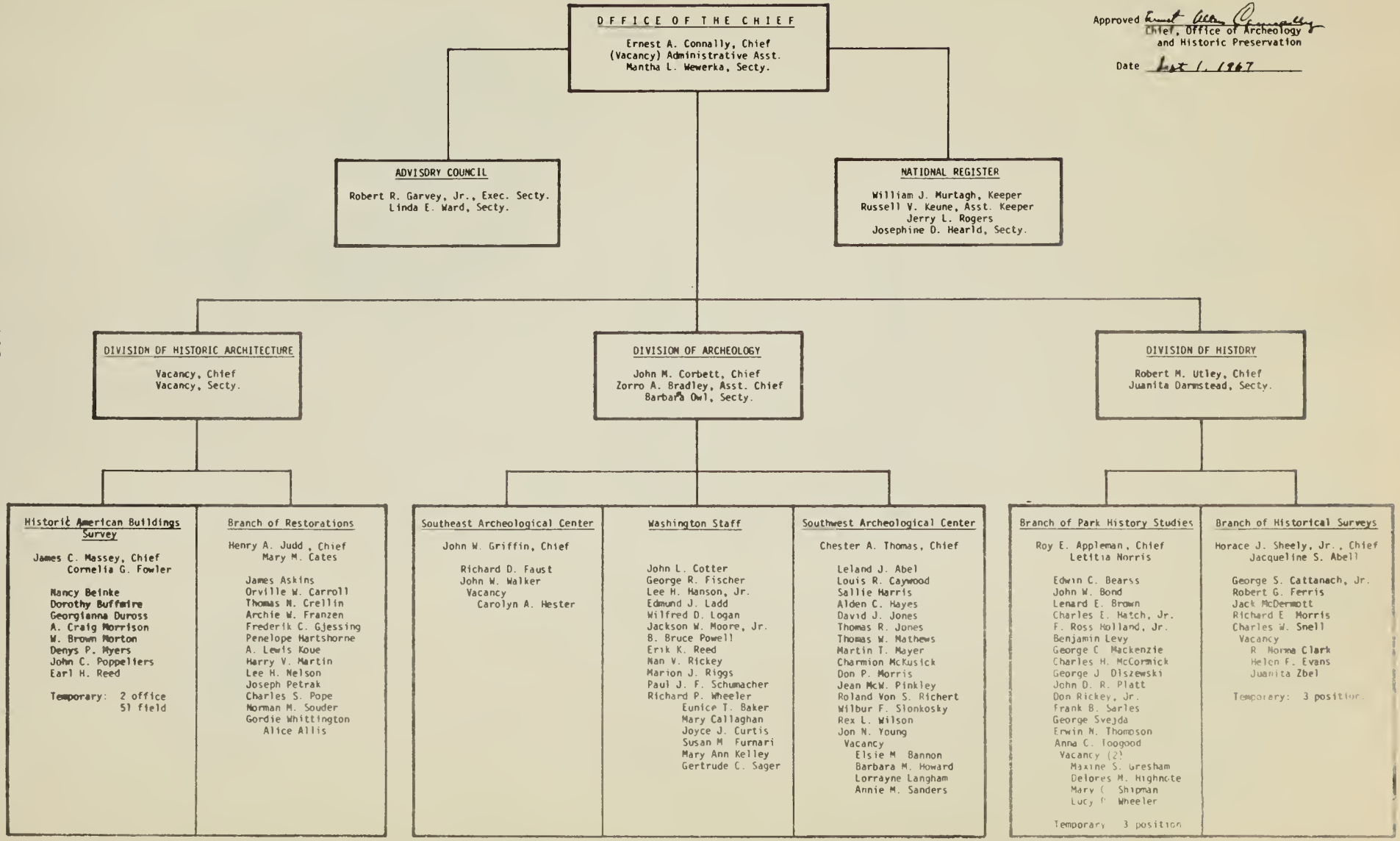
LEGISLATIVE HISTORY:

HOUSE REPORT No. 1916 (Comm. on Interior & Insular Affairs).
SENATE REPORT No. 1363 (Comm. on Interior & Insular Affairs).
CONGRESSIONAL RECORD, Vol. 112 (1966):
July 11: Considered and passed Senate.
Sept. 19: Considered in House.
Oct. 10: Considered and passed House, amended.
Oct. 11: Senate concurred in House amendment.

Department Of The Interior National Park Service
OFFICE OF ARCHEOLOGY AND HISTORIC PRESERVATION

Approved Ernest Allen Connally
Chief, Office of Archeology and Historic Preservation

Date Sept 1, 1967



FEDERAL REGISTER

VOLUME 34 • NUMBER 37

Tuesday, February 25, 1969 • Washington, D.C.

PART II

Department of the Interior

National Park Service

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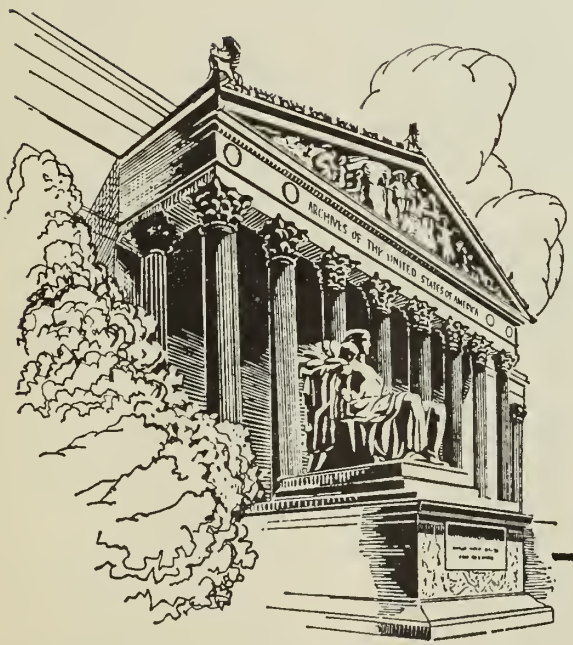
National Register of Historic Places



DEPARTMENT OF THE INTERIOR

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Pursuant to the National Historic Preservation Act of 1966 (80 Stat. 915; 16 U.S.C. 470) the Advisory Council on Historic Preservation and the National Park Service, Department of the Interior have undertaken steps to implement the purposes of that act through (1) expansion of the National Register of Historic Places, (2) initiating a program of grants-in-aid for historic preservation, and (3) adoption of procedures and criteria for furthering the Nation's historic preservation program. In addition, the role and functions of the Advisory Council on Historic Preservation have been more clearly defined.

It is the purpose of this notice, through publication of the following information and materials, to apprise the public, as well as governmental agencies, associations, and all other organizations and individuals interested in historic presentation of the implementing actions that have been taken in order that there will be a greater awareness of the means by which properties of State and local historical significance may be nominated for placement in the National Register, of the criteria used in evaluating the properties, and of the responsibilities exercised by the Advisory Council. The notice includes a list of the properties presently included in the National Register of Historic Places. Amendments and revisions of that list will be published in the FEDERAL REGISTER from time to time.

HARTHON L. BILL,
Acting Director, National Park Service, and Executive Director, Advisory Council on Historic Preservation.

THE NATIONAL HISTORIC PRESERVATION ACT

I. THE NATIONAL REGISTER OF HISTORIC PLACES AND PROCEDURES FOR REGISTRATION

A. *Introduction.* In the National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470, the Congress found and declared:

(a) That the spirit and direction of the Nation are founded upon and reflected in its historic past;

(b) That the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.

(c) That, in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation; and

(d) That, although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

In order to accomplish these purposes, the National Historic Preservation Act provided for three significant innovations: An expanded National Register of Historic Places, a program of grants-in-aid for historic preservation, and an Advisory Council on Historic Preservation empowered to comment upon all undertakings licensed, assisted, or carried out by th Federal Government that have an effect upon properties in the National Register.

Official notice is hereby given to the public and government agencies of the opportunities and restrictions provided by the National Historic Preservation Act. Detailed administrative procedures for the program may be found in the manual "Grants For Historic Preservation: A Guide For State Participation" (U.S. Department of the Interior, National Park Service, Washington, D.C.), which will be available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.

B. *Expanding the National Register of Historic Places.* The Act authorizes the Secretary of the Interior to expand and maintain a National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture. Previously, the National Register included only nationally significant properties that are historical or archeological units of the National Park System or that have been declared eligible for designation as National Historic Landmarks. Because they must meet exacting criteria of national significance, such properties are few in number. The National Historic Preservation Act of 1966 provides a means for States to nominate properties of State and local significance for placement in the National Register.

The following officials have been designated by their Governors to act as State Liaison Officers responsible for State activities under the National Historic Preservation Act:

STATE LIAISON OFFICERS

ALABAMA

Chairman, Alabama Historical Commission, State Department of Archives and History, 624 Washington Avenue, Montgomery, Ala. 36104.

ALASKA

Chief, Parks and Recreation, Department of Natural Resources, Division of Lands, 344 Sixth Avenue, Anchorage, Alaska 99501.

ARIZONA

Director, State Parks Board, Phoenix, Ariz. 85021.

ARKANSAS

Director, Arkansas Planning Commission, Little Rock, Ark. 72201.

CALIFORNIA

Director, Department of Parks and Recreation, State Resources Agency, Post Office Box 2390, Sacramento, Calif. 95811.

COLORADO

President, State Historical Society, Colorado State Museum, East 14th Avenue and Sherman Street, Denver, Colo. 80203.

CONNECTICUT

Chairman, Connecticut Historical Commission, 78 Elm Street, Hartford, Conn. 06115.

DELAWARE

State Archivist, Archives Building, Dover, Del. 19901.

FLORIDA

Executive Director, Florida Board of Archives and History, 401 East Gaines Street, Tallahassee, Fla. 32304.

GEORGIA

Executive Secretary, Georgia Historical Commission, 116 Mitchell Street SW., Atlanta, Ga. 30303.

HAWAII

Director, Department of Land and Natural Resources, State of Hawaii, Honolulu, Hawaii 96813.

IDAHO

Director, Idaho Historical Society, 610 North Julia Drive, Boise, Idaho 83706.

ILLINOIS

Director, Department of Conservation, State Office Building, Springfield, Ill. 62706.

INDIANA

Director, Department of Natural Resources, State of Indiana, Indianapolis, Ind. 42604.

IOWA

Superintendent, State Historical Society of Iowa, Centennial Building, Iowa City, Iowa 52242.

KANSAS

Executive Secretary, Kansas State Historical Society, 120 West 10th, Topeka, Kans. 66612.

KENTUCKY

Coordinator of State and Federal Activities, Office of the Governor, Frankfort, Ky. 40601.

LOUISIANA

Chairman, Louisiana Historical Preservation and Cultural Commission, Post Office Box 44222, Capitol Station, Baton Rouge, La. 70802.

MAINE

Director, State Park and Recreation Commission, State Office Building, Augusta, Maine 04330.

MARYLAND

Director, Maryland Historical Trust, Box 1704, Annapolis, Md. 21401.

MASSACHUSETTS

Secretary of the Commonwealth, Chairman, Massachusetts Historical Commission, Boston, Mass. 02133.

MICHIGAN

Director, Department of Conservation, Stevens T. Mason Building, Lansing, Mich. 48926.

MINNESOTA

Director, Minnesota Historical Society, Cedar and Central Streets, St. Paul, Minn. 55101.

MISSISSIPPI

Director, State of Mississippi, Department of Archives and History, Post Office Box 571, Jackson, Miss. 39201.

MISSOURI

Director, Missouri State Park Board, Post Office Box 176, 1204 Jefferson Building, Jefferson City, Mo. 65101.

MONTANA

Chief of Recreation and Parks Division, Department of Fish and Game, State of Montana, Helena, Mont. 57601.

NEBRASKA

Director, The Nebraska State Historical Society, 15th and R Streets, Lincoln, Nebr. 68508.

NEVADA

Administrator, Division of State Parks, 201 South Fall Street, Room 221, Nye Building, Carson City, Nev. 89701.

NEW HAMPSHIRE

Commissioner, Department of Resources and Economic Development, Concord, N.H. 03301.

NEW JERSEY

Commissioner, State of New Jersey, Department of Conservation and Economic Development, Trenton, N.J. 08608.

NEW MEXICO

State Planning Officer, State of New Mexico, Santa Fe, N. Mex. 87501.

NEW YORK

Chairman, New York State Historic Trust, 30 Rockefeller Plaza, Room 5600, New York, N.Y. 10020.

NORTH CAROLINA

Director, Department of Archives and History, State of North Carolina, Raleigh, N.C. 27602.

NORTH DAKOTA

Superintendent, State Historical Society of North Dakota, Liberty Memorial Building, Bismarck, N. Dak. 58501.

OHIO

Director, The Ohio Historical Society, Columbus, Ohio 43210.

OKLAHOMA

Chairman, Oklahoma Historical Society, 1108 Colcord Building, Oklahoma City, Okla. 73102.

OREGON

State Highway Engineer, Oregon State Highway Department, State Highway Building, Salem, Oreg. 97310.

PENNSYLVANIA

Executive Director, Pennsylvania Historical and Museum Commission, William Penn Memorial Museum and Archives Building, Harrisburg, Pa. 17108.

RHODE ISLAND

Director, Rhode Island Development Council, Roger Williams Building, Hayes Street, Providence, R.I. 02908.

SOUTH CAROLINA

Director, State Archives Department, 1430 Senate Street, Columbia, S.C. 29201.

SOUTH DAKOTA

Chief, Division of Parks and Recreation, Department of Game, Fish and Parks, Pierre, S. Dak. 57501.

TENNESSEE

Chairman, Tennessee Historical Commission, State Library and Archives Building, Nashville, Tenn. 37219.

TEXAS

Executive Director, Texas State Historical Survey Committee, 108 West 15th Street, Austin, Tex. 78701.

UTAH

Director, Department of Development Services, 312 State Capitol Building, Salt Lake City, Utah 84114.

VERMONT

Director, Vermont Historical Society, Montpelier, Vt. 05602.

VIRGINIA

Chairman, Virginia Historic Landmarks Commission, Room 1106, State Ninth Street Office Building, Richmond, Va. 23219.

WASHINGTON

Director, Washington State Parks and Recreation, Olympia, Wash. 98501.

WEST VIRGINIA

Chairman, Ad Hoc Committee on Historic Properties, Potomac State College, Keyser, W. Va. 26726.

WISCONSIN

Director, State Historical Society of Wisconsin, 816 State Street, Madison, Wis. 53706.

WYOMING

Executive Director, Wyoming Recreation Commission, Cheyenne, Wyo. 82001.

DISTRICT OF COLUMBIA

Deputy Mayor, Executive Office, District of Columbia Government, Washington, D.C. 20004.

COMMONWEALTH OF PUERTO RICO

Executive Director, Institute of Puerto Rican Culture, San Juan, P.R. 00931.

GUAM

Director of Land Management, Government of Guam, Agana, Guam.

VIRGIN ISLANDS

Planning Director, Virgin Islands Planning Board, Charlotte Amalie, St. Thomas, V.I.

SAMOA

Office of the Governor, Pago Pago, American Samoa.

The State Liaison Officer supervises a professional survey staff in conducting a statewide historic sites survey. From the survey findings a comprehensive statewide historic preservation plan is prepared. The plan must be reviewed and approved by a high-level professional review committee. The State Liaison Officer, in accordance with the plan, may then nominate properties for inclusion in the National Register. The nominated properties which are approved by the National Park Service are entered in the National Register of Historic Places by the Chief, Office of Archeology and Historic Preservation, National Park Service.

In exceptional cases, States may make nominations before submission of the statewide historic preservation plan. The National Park Service will consider appropriate properties so nominated which have received unanimous approval of the professional review committee and the State Liaison Officer as unquestionably worthy of entry into the National Register of Historic Places. Such consideration will be given to properties which are: (a) In State ownership; (b) recognized in other Federal historic preservation programs; (c) owned by private, national, regional, or State organizations concerned with historic preservation; or (d) recognized in an existing State landmark program.

The following criteria shall be used by the States in evaluating properties for nomination to the National Register of Historic Places and by the National Park Service in reviewing State nominations.

National Register Criteria of Evaluation

The quality of significance in American history, architecture, archeology, and culture is present in districts, sites, buildings, structures, and objects of State and local importance that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

1. That are associated with events that have made a significant contribution to the broad patterns of our history; or

2. That are associated with the lives of persons significant in our past; or

3. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

4. That have yielded, or may be likely to yield, information important in prehistory or history.

Criteria considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

(a) A religious property deriving primary significance from architectural or artistic distinction or historical importance.

(b) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event.

(c) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life.

(d) A cemetery which derives its primary significance from graves of persons

of transcendent importance, from age, from distinctive design features, or from association with historic events.

(e) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived.

(f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance.

(g) A property achieving significance within the past 50 years if it is of exceptional importance.

C. *Grants for historic preservation.* The National Historic Preservation Act also authorizes a program of grants-in-aid to States for comprehensive statewide historic site surveys and preservation plans. Grants are also authorized to States, local governments, private organizations, and individuals for preservation projects in accordance with an approved statewide plan. All grants are made through the States. The State Liaison Officer may then distribute the funds to other approved public and private recipients. Funds may be used for acquisition, protection, rehabilitation, restoration, and reconstruction of properties included in the National Register of Historic Places.

II. PROTECTION OF PROPERTIES IN THE NATIONAL REGISTER OF HISTORIC PLACES

A. *Introduction.* The National Historic Preservation Act of 1966 created the Advisory Council on Historic Preservation. The Council is authorized to advise the President and the Congress on matters relating to historic preservation; to recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; to comment on undertakings carried out, licensed, or financially assisted by the Federal Government which have any effect upon properties listed in the National Register; and to secure from the appropriate Federal agencies certain information necessary to the performance of these duties.

B. *Procedures for section 106 compliance.* The Advisory Council exercises an important function by responding with comments to undertakings carried out, licensed, or financially assisted by the Federal Government, when the undertaking will affect a property listed in the National Register. This authority derives from section 106 of the National Historic Preservation Act, which provides:

> The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under title II of this Act a reasonable opportunity to comment with regard to such undertaking.

The Advisory Council desires to provide maximum assistance in connection with section 106. Normally the Council anticipates that its comments will be required in only the most complex situations, and it requests that agencies fulfill their obligations under section 106 by the use of the following procedures:

ADVISORY COUNCIL ON HISTORIC PRESERVATION
WASHINGTON, D.C. 20240

Procedures for Compliance
Section 106
National Historic Preservation Act of 1966

At the earliest stage of planning or consideration of any undertakings carried out, licensed, or financially assisted by the Federal Government, an agency should follow these steps:

1. Consult the National Register of Historic Places to determine if a National Register property is involved in the undertaking. The National Register is maintained by the Office of Archeology and Historic Preservation, National Park Service, and published from time to time with interim addendums in the FEDERAL REGISTER.

2. Apply the "Criteria for Effect." If there is no effect, the undertaking may proceed.

3. If there is an effect, regional, or State officials of the agency[1] in consultation with the State Liaison Officer and a representative of the Office of Archeology and Historic Preservation shall:

(a) Determine if the effect is adverse—if not, the undertaking may proceed;

(b) Upon finding an adverse effect, select and agree upon a prudent and feasible alternative to remove the adverse effect, in which case the undertaking may proceed;

(c) Failing to find and agree upon an alternative, recommend all possible planning to minimize the adverse effect and delay further processing of the undertaking pending the receipt of comments from the Advisory Council.

4. Provide written notice affording the Advisory Council an opportunity to comment upon doubtful or unresolved situations of adverse effect and upon request submit a report of the undertaking.

The Council expects to exert its advisory prerogatives by commenting to agencies in certain special situations even though written notice of effect has not been received.

Criteria for Effect

A federally financed or licensed undertaking shall be considered to have an effect on a National Register listing (districts, sites, buildings, structures, and objects, including their settings) when any condition of the undertaking creates a change in the quality of the historical, architectural, archeological, or cultural character that qualified the property under the National Register criteria for listing in the National Register.

Generally, adverse effect occurs under conditions which include but are not limited to:

(a) Destruction or alteration of all or part of a property;

(b) Isolation from or alteration of its surrounding environment;

(c) Introduction of visual, audible, or atmospheric elements that are out of character with the property and its setting.

[1] When the agency has no regional or State officials, the Office of Archeology and Historic Preservation will perform this service.

C. *Advisory Council section 106 reporting procedures.* For the convenience of agencies submitting effect notices to the Council under section 106, the following standard procedures for handling such notices have been promulgated:

1. Upon receipt of a written notice of an undertaking having an effect on a National Register property, the Council shall:

(a) Acknowledge its receipt and give notice of a 14-day review period during which the Advisory Council may determine and so advise the agency of its desire to comment;

(b) Refer the notice to the Office of Archeology and Historic Preservation, National Park Service, for a preliminary verification of significance, National or otherwise, and evaluation of the effect upon the National Register property; and

(c) Determine that it will or will not comment.

2. Upon determination that the Council will comment on an undertaking, the Council shall:

(a) Notify the agency of Council intent to comment and date by which it will do so;

(b) Place the matter on the agenda of the next regular meeting or in exceptional circumstances schedule the matter for consideration in an unassembled meeting; and

(c) Authorize preparation of a section 106 report.

3. The section 106 report shall be prepared by the Executive Director and shall contain:

(a) A full report of verification and evaluation of the effect prepared by the Office of Archeology and Historic Preservation;

(b) A report from the requesting agency on the undertaking with the agency evaluation of effect; and

(c) Conclusions.

The section 106 report shall contain but not be limited to information such as a full description including visual materials of the National Register property, the undertaking, agency efforts to take into account effect on National Register properties, records of hearings, statements of support or opposition, a statement from the State Liaison Officer, and answers to any specific questions voiced by Council members. The Council will not hold formal hearings on section 106 matters. The Council comments to agencies shall take the form of a three-part statement including an introduction, findings, and a conclusion.

III. THE NATIONAL REGISTER OF HISTORIC PLACES

Pursuant to the authority vested in the Director of the National Park Service under the Antiquities Act of 1906, 34 Stat. 225, 16 U.S.C. 431; the Act of August 25, 1916, 39 Stat. 535, 16 U.S.C. 1; the Historic Sites Act of 1935, 49 Stat. 666, 16 U.S.C. 461; and the National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470; the properties listed below are included in the National Register of Historic Places. The responsibility

of all Federal agencies to take cognizance of these properties is specified in section 106 of the National Historic Preservation Act.

NATIONAL REGISTER ENTRIES

ALABAMA

Baldwin County

Gasque vicinity, *Fort Morgan*, western terminus of Alabama 180.

Colbert County

Florence vicinity, *Wilson Dam*, Tennessee River, on Alabama 133 (also in Lauderdale County).

Elmore County

Wetumpka vicinity, *Fort Toulouse*, 4 miles southwest of Wetumpka at confluence of the Coosa and Tallapoosa Rivers.

Hale County

Moundville vicinity, *Moundville Site*, 1 mile west of Moundville on County Route 21.

Jackson County

Bridgeport vicinity, *Russell Cave National Monument*, 8 miles west of Bridgeport via U.S. 72 and County Routes 91 and 75.

Launderdale County

Wilson Dam (see Colbert County).

Macon County

Tuskegee vicinity, *Tuskegee Institute*, 1 mile northwest of Tuskegee on U.S. 80.

Montgomery County

Montgomery, *First Confederate Capitol*, Goat Hill, east end of Dexter Avenue.

Russell County

Holy Trinity vicinity, *Apalachicola Fort*, 1.5 miles east of Holy Trinity on Chattahoochee River.

Talladega County

Talladega vicinity, *Curry (J. L. M.) Home*, 3 miles northeast of Talladega on Alabama 21.

Tallapoosa County

Dadeville vicinity, *Horseshoe Bend National Military Park*, Tallapoosa River, 12 miles north of Dadeville on Alabama 49.

ALASKA

Northwestern District

Barrow vicinity, *Birnirk Site*, 5 miles northeast of Barrow.

Cape Denbigh Peninsula, *Iyatayet Site*, Norton Sound.

Cape Prince of Wales vicinity, *Wales Sites*, adjacent to Cape Prince of Wales on Seward Peninsula.

Nome vicinity, *Anvil Creek Gold Discovery Site*, 4.25 miles north of Nome on Seward Peninsula at Anvil Creek.

Point Hope Peninsula, *Ipiutak Site*, tip of Point Hope, lat. 68°20' N., long. 167°50' W.

St. Lawrence Island, *Gambell Sites*, Northwest Cape.

Southcentral District

Kodiak, Kodiak Island, *Erskine House*, Main Street and Mission Street.

Nikolski vicinity, *Chaluka Site*, Umnak Island, Aleutian Islands.

Rip Rock vicinity, Hawkins Island, *Palugvik Site*, 3.75 miles east of Rip Rock on Prince William Sound.

Pribilof Islands, St. Paul Island, *Fur Seal Rookeries*.

Yukon Island, *Yukon Island Main Site*, Kachemak Bay, Cook Inlet.

Southeastern District

Sitka, *American Flag Raising Site*, Castle Hill.

Sitka, *Russian Mission Orphanage*, Lincoln and Monastery Streets.

Sitka, *St. Michael's Cathedral*, Lincoln and Maksoutoff Streets.

Sitka, Baranof Island, *Sitka National Monument*.

Sitka vicinity, *Old Sitka Site*, 6 miles north of Sitka on Starrigavan Bay.

Skagway and vicinity, *Skagway Historic District and White Pass*, head of Taiya Inlet on Lynn Canal.

ARIZONA

Apache County

Chinle, *Canyon de Chelly National Monument*, east side of Chinle.

Ganado, *Hubbell Trading Post National Historic Site*, west side of Ganado.

Springerville vicinity, *Casa Malpais Site*, 2 miles north of Springerville.

Cochise County

Bisbee vicinity, *Coronado National Memorial*, 30 miles southwest of Bisbee via Arizona 92 and secondary road.

Bisbee vicinity, *Lehner Mammoth-Kill Site*, 10 miles west of Bisbee.

Bowie vicinity, *Fort Bowie National Historic Site*, 13 miles south of Bowie.

Douglas vicinity, *Double Adobe Site*, 12 miles northwest of Douglas on the west bank of Whitewater Creek.

Douglas vicinity, *San Bernardino Ranch*, 17 miles east of Douglas on the international boundary.

Tombstone, *Tombstone Historic District*.

Coconino County

Flagstaff vicinity, *Lowell Observatory*, 1 mile west of Flagstaff on Mars Hill.

Flagstaff vicinity, *Merriam (C. Hart) Base Camp Site*, 20 miles northwest of Flagstaff, at Little Springs private enclave in Coconino National Forest.

Flagstaff vicinity, *Walnut Canyon National Monument*, 8 miles east of Flagstaff on U.S. 66.

Flagstaff vicinity, *Wupatki National Monument*, 30 miles north of Flagstaff off U.S. 89.

Winona vicinity, *Winona Site*, 5 miles northeast of Winona on U.S. 66, Coconino National Forest.

Gila County

Globe vicinity, *Roosevelt Dam*, Salt River, 31 miles northwest of Globe on Arizona 88 (also in Maricopa County).

Globe vicinity, *Tonto National Monument*, 28 miles northwest of Globe on Arizona 88.

Whiteriver vicinity, *Kinishba Ruins*, 15 miles west of Whiteriver via Arizona 73 and secondary road.

Graham County

Bonita vicinity, *Sierra Bonita Ranch*, southwest of Bonita.

Morenci vicinity, *Point of Pines*, 30 miles northwest of Morenci, San Carlos Indian Reservation.

Maricopa County

Gila Bend vicinity, *Gatlin Site*, 3 miles north of Gila Bend.

Phoenix, *Hohokam-Pima Irrigation Sites*, Park of the Four Waters (also in Pinal County).

Phoenix, *Pueblo Grande Ruin*, Washington Avenue, Pueblo Grande City Park.

Roosevelt Dam (see Gila County).

Mohave County

Fredonia vicinity, *Pipe Spring National Monument*, 15 miles southwest of Fredonia.

Navajo County

Kayenta vicinity, *Navajo National Monument*, 30 miles southwest of Kayenta.

Keams Canyon vicinity, *Awatovi Ruins*, 8 miles south of Keams Canyon, Hopi Indian Reservation.

Oraibi vicinity, *Old Oraibi*, 3 miles west of Oraibi on Arizona 264, Hopi Indian Reservation.

Pima County

Santa Rosa vicinity, *Ventana Cave*, 11 miles west of Santa Rosa, Papago Indian Reservation.

Tucson vicinity, *Desert Laboratory*, west of Tucson off West Anklam Road.

Tucson vicinity, *San Xavier del Bac*, 9 miles south of Tucson via Mission Road.

Pinal County

Chandler vicinity, *Snaketown*, 12 miles southwest of Chandler, Gila River Indian Reservation.

Coolidge vicinity, *Casa Grande Ruins National Monument*, 2 miles north of Coolidge on Arizona 87.

Phoenix vicinity, *Hohokam-Pima Irrigation Sites* (see Maricopa County).

Santa Cruz County

Nogales vicinity, *Tumacacori National Monument*, 18 miles north of Nogales on Interstate 19.

Yavapai County

Clarkdale vicinity, *Tuzigoot National Monument*, 2 miles east of Clarkdale.

Flagstaff vicinity, *Montezuma Castle National Monument*, 40 miles south of Flagstaff on Interstate 17.

Jerome, *Jerome Historic District*.

Yuma County

Yuma, *Yuma Crossing and Associated Sites*, Banks of the Colorado River (also in Imperial County, Calif.).

ARKANSAS

Arkansas County

Gillet vicinity, *Arkansas Post National Memorial*, 8 miles southeast of Gillet on Arkansas 1 and 169.

Benton County

Pea Ridge, *Pea Ridge National Military Park*.

Cross County

Parkin vicinity, *Parkin Indian Mound*, north edge of Parkin.

Mississippi County

Wilson, *Nodena Site*, south edge of Wilson.

Sebastian County

Fort Smith, *Fort Smith National Historic Site*.

CALIFORNIA

Alameda County

Berkeley, *Room 307, Gilman Hall, University of California*, University of California campus.

Oakland, *Lake Merritt Wild Duck Refuge*, Lakeside Park, Grand Avenue.

Oakland, *Miller (Joaquin) House, The Abbey*, Joaquin Miller Road and Sanborn Drive.

Contra Costa County

Martinez, *John Muir National Historic Site*, 4440 Alhambra Avenue.

El Dorado County

Placerville vicinity, *Coloma*, 7 miles northwest of Placerville on California 49.

etc.

Table 1: National Register Listings by Calendar Year

Year	Number	Year	Number	Year	Number	Year	Number
1966	868	1971	1074	1976	2159	1981	724[1]
1967	29	1972	1551	1977	1513	1982	4893
1968	57	1973	2225	1978	3383	1983[2]	4495
1969	358	1974	2241	1979	3546	1984[2]	3915
1970	898	1975	2032	1980	4526	1985[2]	3171
						1986[3]	998
Total							44,656

[1] Low number of listings during 1981 resulted from a prohibition on listing privately owned property while regulations were being prepared to implement "owner objection" provisions of the 1980 Amendments to the Act.
[2] Of the total number of listings in 1983, 1984, and 1985, there were 571, 488, and 406 historic districts, respectively.
[3] Listings for 1986 are through April.

Table 2: National Register Listings by State[1]

Alabama	673	Montana	343
Alaska	242	Nebraska	433
American Samoa	8	Nevada	197
Arizona	589	New Hampshire	488
Arkansas	770	New Jersey	945
California	1470	New Mexico	576
Colorado	627	New York	2225
Connecticut	707	North Carolina	1389
Delaware	519	North Dakota	212
District of Columbia	231	Northern Marianas	27
Florida	555	Ohio	2749
Georgia	1195	Oklahoma	690
Guam	67	Oregon	737
Hawaii	213	Pennsylvania	1866
Idaho	749	Puerto Rico	114
Illinois	896	Rhode Island	528
Indiana	837	South Carolina	925
Iowa	1009	South Dakota	461
Kansas	446	Tennessee	1043
Kentucky	1993	Trust Territory	35
Louisiana	653	Texas	1402
Maine	837	Utah	884
Maryland	959	Vermont	387
Massachusetts	2062	Virgin Islands	78
Michigan	989	Virginia	1234
Minnesota	1200	Washington	685
Mississippi	727	West Virginia	478
Missouri	900	Wisconsin	1140
		Wyoming	262
		Total	44,656

[1] Listings from program inception in 1966 through April 1986.

June 19, 1986

HISTORIC PRESERVATION GRANTS-IN-AID: FUNDING HISTORY
(P.L. 89-665: NATIONAL HISTORIC PRESERVATION ACT OF 1966)

FY	Authorization		NPS/HCRS Request	Cleared by Department	President's Budget	Appropriation
1967	$ 2,000,000		$ 1,750,000	$ 1,750,000	$ -0-	$ -0-
1968	10,000,000		9,450,000	9,450,000	1,853,000	300,000
1969	10,000,000		10,600,000	2,800,000	680,000	100,000
1970	10,000,000		9,450,000	1,569,000	969,000	969,000
1971	7,000,000		6,119,000	6,119,000	6,119,000	5,980,000
1972	10,000,000		5,980,000	5,980,000	5,980,000	5,980,000
1973	15,000,000		6,205,000	6,205,000	6,205,000	7,505,000
1974	15,600,000		7,505,000	7,505,000	15,505,000	11,505,000
1975	20,000,000		20,000,000	20,000,000	20,000,000	20,000,000
1976	24,400,000		20,000,000	20,000,000	20,000,000	20,000,000
3/Mo. Trans.	4,750,000	PHP	4,750,000	4,750,000	4,750,000	4,750,000(a)
1977	24,400,000		10,000,000	10,000,000	10,000,000	17,500,000
1978	100,000,000		17,500,000	17,500,000	17,500,000	45,000,000
1979	100,000,000	HPF	45,000,000	45,000,000	45,000,000	60,000,000
1980	150,000,000		45,000,000	45,000,000	45,000,000	55,000,000(b)
1981	150,000,000		45,000,000	45,000,000	45,000,000	26,000,000(c)
1982	150,000,000		4,600,000	4,600,000	4,600,000	25,440,000(d)
1983	150,000,000		-0-	-0-	-0-	51,000,000(e)
1984	150,000,000		-0-	-0-	-0-	27,500,000(f)
1985	150,000,000		-0-	-0-	-0-	25,480,000(g)
1986	150,000,000		-0-	-0-	-0-	23,729,330(g)
Total	$1,403,150,000		$268,909,000	$252,000,000	$249,161,000	$433,738,330

(a) 3-Month Transition Quarter when Federal Fiscal Year End changed.
(b) $10,000,000 deferred from Fiscal Year 1980 to Fiscal Year 1981.
(c) Revised 1981 budget request reduced original request from $45,000,000.
(d) $26,500,000 originally approved was reduced by 4 percent as part of multi-departmental budget reduction; proposed $781,000 deferral was restored.
(e) Beginning with 1981 appropriation, Program Administration costs ($1,540,000 in 1981) were separated from grants-in-aid appropriation. Includes $25,000,000 from Emergency Jobs Act (PL 98-8).
(f) $1,000,000 appropriated to the NPS construction account & earmarked for Natchez, Mississippi erosion study.
(g) Twelve month Continuing Resolution.

The PHP was derived from General Revenue, no-year appropriations. (Preservation of Historic Properties budget item)

HPF is derived from Outer Continental Shelf revenue; 2-year appropriations. (Historic Preservation Fund)

National Historic Preservation Act of 1966, as amended

AN ACT to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes, Approved October 15, 1966 (Public Law 89-665; 80 STAT. 915; 16 U.S.C. 470) as amended by Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, and Public Law 96-515).

Section 1 *(16 U.S.C. 470)*

Short title

(a) This Act may be cited as the "National Historic Preservation Act."

Purpose of the Act

(b) The Congress finds and declares that—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 2 *(16 U.S.C. 470-1)*

Declaration of policy

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations;

(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 101 *(16 U.S.C. 470a)*

National Register of Historic Places, expansion and maintenance

(a)(1)(A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

National Historic Landmarks, designation

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on the date of enactment of the National Historic Preservation Act Amendments of 1980 shall be deemed to be included on the National Register as of their initial listing for purposes of this Act. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this Act and the Act of August 21, 1935 (49 Stat. 666); except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register and submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

Criteria for National Register and National Historic Landmarks and regulations

(2) The Secretary in consultation with national historic and archeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for—

(A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing such designation;

(C) considering appeals from such recommendations, nomination, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

Nominations to the National Register

(3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b), shall nominate to the Secretary properties which meet the criteria promulgated under subsection (a) for inclusion on the National Register. Subject to paragraph (6), any property nominated under this paragraph or under section 110(a)(2) shall be included on the National Register on the date forty-five days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed under paragraph (5).

Nominations from individuals and local governments

(4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in a State where there is no program approved under subsection (b). The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such determinations shall be made within ninety days from the date of nomination unless the nomination is appealed under paragraph (5).

Appeals of nominations

(5) Any person or local government may appeal to the Secretary a nomination of any historic property for inclusion on the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property in accordance with this subsection.

Owner participation in nomination process

(6) The Secretary shall promulgate regulations requiring that before any property or district may be included on the National Register or designated as a National Historic Landmark, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary shall review the nomination of the property or district where any such objection has been made and shall determine whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property.

Regulations for curation, documentation, and local government certification

(7) The Secretary shall promulgate, or revise, regulations—

(A) ensuring that significant prehistoric and historic artifacts, and associated records, subject to section 110 of this Act, the Act of June 27, 1960 (16 U.S.C. 469c), and the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) are deposited in an institution with adequate long-term curatorial capabilities;

(B) establishing a uniform process and standards for documenting historic properties by public agencies and private parties for purposes of incorporation into, or complementing, the national historic architectural and engineering records within the Library of Congress; and

(C) certifying local governments, in accordance with subsection (c)(1) and for the allocation of funds pursuant to section 103(c) of this Act.

State Historic Preservation Programs

(b)(1) The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program—

Designation of the State Historic Preservation Officer (SHPO)

(A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such program in accordance with paragraph (3) and for the employment or appointment by such officer of such professionally qualified staff as may be necessary for such purposes;

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

Review of State programs

(2) Periodically, but not less than every four years after the approval of any State program under this subsection, the Secretary shall evaluate such program to make a determination as to whether or not it is in compliance with the requirements of this Act. If at any time, the Secretary determines that a State program does not comply with such requirements, he shall disapprove such program, and suspend in whole or in part assistance to such State under subsection (d)(1), unless there are adequate assurances that the program will comply with such requirements within a reasonable period of time. The Secretary may also conduct periodic fiscal audits of State programs approved under this section.

SHPO responsibilities

(3) It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to—

(A) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;

(B) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;

(C) prepare and implement a comprehensive statewide historic preservation plan;

(D) administer the State program of Federal assistance for historic preservation within the State;

(E) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

(F) cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

(G) provide public information, education and training, and technical assistance relating to the Federal and State Historic Preservation Programs; and

(H) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c).

Arrangements with nonprofit organizations

(4) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.

Approval of existing programs

(5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of—

(A) the date on which the Secretary approves a program submitted by the State under this subsection, or

(B) three years after the date of the enactment of the National Historic Preservation Act Amendments of 1980.

Certification of local governments

(c)(1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this Act and provide for the transfer, in accordance with section 103(c), of a portion of the grants received by the States under this Act, to such local governments. Any local government shall be certified to participate under the provisions of this section if the applicable State Historic Preservation Officer, and the Secretary, certifies that the local government—

(A) enforces appropriate State or local legislation for the designation and protection of historic properties;

(B) has established an adequate and qualified historic preservation review commission by State or local legislation;

(C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b);

(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and

(E) satisfactorily performs the responsibilities delegated to it under this Act.

Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (A) through (E); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.

Participation of certified local governments in National Register nominations

(2)(A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the State Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to section 101(a). The State may expedite such process with the concurrence of the certified local government.

(B) If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to Section 101(a). Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

(3) Any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provision of section 103(c) of this Act, and shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable.

Grants to States

(d)(1) The Secretary shall administer a program of matching grants-in-aid to the States for historic preservation projects, and State historic preservation programs, approved by the Secretary and having as their purpose the identification of historic properties and the preservation of properties included on the National Register.

Grants to the National Trust

(2) The Secretary shall administer a program of matching grants-in-aid to the National Trust for Historic Preservation in the United States, chartered by Act of Congress approved October 26, 1949 (63 Stat. 947), for the purposes of carrying out the responsibilities of the National Trust.

Direct grants for threatened National Historic Landmarks, demonstration projects, training, and displacement prevention

(3)(A) In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 108. These grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer—

(i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance;

(ii) for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties;

(iii) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation; and,

(iv) to assist persons or small businesses within any historic district included in the National Register to remain within the district.

Grants and loans to minority groups

(B) The Secretary may also, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

(C) Grants may be made under subparagraph (A)(i) and (iv) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 104.

Prohibition on compensating intervenors

(e) No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this Act.

Guidelines for Federal agency responsibilities

(f) In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 110 of this title.

Preservation standards for federally owned properties

(g) Within one year after the date of enactment of the National Historic Preservation Act Amendments of 1980, the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control.

Technical advice

(h) The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

Section 102 *(16 U.S.C. 470b)*

Grants requirements

(a) No grant may be made under this Act—

(1) unless application therefore is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897);

(3) for more than 50 per centum of the aggregate cost of carrying out projects and programs specified in section 101(d) (1) and (2) in any one fiscal year, except that for the costs of State or local historic surveys or inventories the Secretary shall provide 70 per centum of the aggregate cost involved in any one fiscal year;

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

(5) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources. Notwithstanding any other provision of law, no grant made pursuant to this Act shall be treated as taxable income for purposes of the Internal Revenue Code 1954.

Waiver for the National Trust

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States, in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory to the Secretary.

Limitation on matching

(c) No State shall be permitted to utilize the value of real property obtained before the date of approval of this Act in meeting the remaining cost of a project for which a grant is made under this Act.

Section 103 *(16 U.S.C. 470c)*

Apportionment of survey and planning grants

(a) The amounts appropriated and made available for grants to the States for comprehensive statewide historic surveys and plans under this Act shall be apportioned among the States by the Secretary on the basis of needs as determined by him.

Apportionment of project and program grants

(b) The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans. The Secretary shall notify each State of its apportionment under this subsection within thirty days following the date of enactment of legislation appropriating funds under this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection.

Apportionment to certified local governments

(c) A minimum of 10 per centum of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this Act shall be transferred by the State, pursuant to the requirements of this Act, to local governments which are certified under section 101(c) for historic preservation projects or programs of such local governments. In any year in which the total annual apportionment to the States exceeds $65,000,000, one half of the excess shall also be transferred by the States to local governments certified pursuant to section 101(c).

Guidelines for apportionment to local governments

(d) The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) to insure that no local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single local government. The guidelines shall not limit the ability of any State to distribute more than 10 per centum of its annual apportionment under subsection (c), nor shall the Secretary require any State to exceed the 10 per centum minimum distribution to local governments.

Section 104 *(16 U.S.C. 470d)*

Insured loans for National Register properties

(a) The Secretary shall establish and maintain a program by which he may, upon application of a private lender, insure loans (including loans made in accordance with a mortgage) made by such lender to finance any project for the preservation of a property included on the National Register.

Requirements

(b) A loan may be insured under this section only if—

(1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;

(2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed such amount, and such a rate, as is established by the Secretary, by rule;

(3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;

(4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;

(5) the repayment period of the loan does not exceed the lesser of forty years or the expected life of the asset financed;

(6) the amount insured with respect to such loan does not exceed 90 per centum of the loss sustained by the lender with respect to the loan; and

(7) the loan, the borrower, and the historic property to be preserved meet other terms and conditions as may be prescribed by the Secretary, by rule, especially terms and conditions relating to the nature and quality of the preservation work.

Interest rates

The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

Limitation on loan authority

(c) The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to section 108 and subsection (g) and (i) of this section, as in effect on the date of the enactment of the Act but which has not been appropriated for any purpose.

Assignability and effect

(d) Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

Method of payment for losses

(e) The Secretary shall specify, by rule and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

Protection of Government's financial interests; foreclosure

(f) In entering into any contract to insure a loan under this section, the Secretary shall take steps to assure adequate protection of the financial interests of the Federal Government. The Secretary may—

(1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the property securing a loan insured under this title; and

(2) operate or lease such property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (g).

Conveyance of foreclosed property

(g)(1) In any case in which a historic property is obtained pursuant to subsection (f), the Secretary shall attempt to convey such property to any governmental or nongovernmental entity under such conditions as will ensure the property's continued preservation and use; except that if, after a reasonable time, the Secretary, in consultation with the Advisory Council on Historic Preservation, determines that there is no feasible and prudent means to convey such property and to ensure its continued preservation and use, then the Secretary may convey the property at the fair market value of its interest in such property to any entity without restriction.

(2) Any funds obtained by the Secretary in connection with the conveyance of any property pursuant to paragraph (1) shall be covered into the historic preservation fund, in addition to the amounts covered into such fund pursuant to section 108 and subsection (i) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

Fees

(h) The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be covered into the Historic Preservation Fund, in addition to the amounts covered into such fund pursuant to section 108 and subsection (g) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

Loans to be considered non-Federal funds

(i) Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

Appropriation authorization

(j) Effective after the fiscal year 1981 there are authorized to be appropriated, such sums as may be necessary to cover payments incurred pursuant to subsection (e).

Prohibition against acquisition by Federal Financing Bank

(k) No debt obligation which is made or committed to be made, or which is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

Section 105 *(16 U.S.C. 470e)*

Recordkeeping

The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Section 106 *(16 U.S.C. 470f)*

Advisory Council on Historic Preservation, comment on Federal undertakings

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Section 107 *(16 U.S.C. 470g)*

Exemption of White House, Supreme Court, and Capitol

Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

Section 108 *(16 U.S.C. 470h)*

Establishment of Historic Preservation Fund; authorization for appropriations

To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States.

There shall be covered into such fund $24,400,000 for fiscal year 1977, $100,000,000 for fiscal year 1978, $100,000,000 for fiscal year 1979, $150,000,000 for fiscal year 1980, $150,000,000 for fiscal year 1981, and $150,000,000 for each of fiscal years 1982 through 1987, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469) as amended (43 U.S.C. 338) and/or under the Act of June 4, 1920 (41 Stat. 813) as amended (30 U.S.C. 191), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: Provided, that appropriations made pursuant to this paragraph may be made without fiscal year limitation.

Section 109 *(16 U.S.C. 470h-1)*

Donations to the Secretary

(a) In furtherance of the purposes of sections of this Act, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 101 of this Act, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

Expenditure of donated funds

(b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 102 of this Act, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act.

Transfer of funds donated for the National Park Service

(c) The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this Act.

Federal agencies' responsibility to preserve and use historic buildings

(a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(f), any preservation, as may be necessary to carry out this section.

Protection and nomination to the National Register of Federal properties

(2) With the advice of the Secretary and in cooperation with the State Historic Preservation Officer for the State involved, each Federal agency shall establish a program to locate, inventory, and nominate to the Secretary all properties under the agency's ownership or control by the agency, that appear to qualify for inclusion on the National Register in accordance with the regulations promulgated under section 101(a)(2)(A). Each Federal agency shall exercise caution to assure that any such property that might qualify for inclusion is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.

Recordation of historic properties prior to demolition

(b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

Designation of Federal agency preservation officers

(c) The head of each Federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101(g).

Conduct of agency programs consistent with Act

(d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

Transfer of surplus Federal historic properties

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

Federal undertakings affecting National Historic Landmarks

(f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

Preservation activities as an eligible project cost

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

Preservation awards program

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed $1,000 and provide citations for special achievements to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.

Applicability of National Environmental Policy Act

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969, and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

Section 111 *(16 U.S.C. 470h-3)*

Leases or exchanges of Federal historic properties

(a) Notwithstanding any other provision of law, any Federal agency may, after consultation with the Advisory Council on Historic Preservation, lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

Use of proceeds

(b) The proceeds of any lease under subsection (a) may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

Management contracts

(c) The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of historic property.

Section 201 *(16 U.S.C. 470i)*

Advisory Council on Historic Preservation; membership

(a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation (hereinafter referred to as the "Council") which shall be composed of the following members:

(1) a Chairman appointed by the President selected from the general public;

(2) the Secretary of the Interior;

(3) the Architect of the Capitol;

(4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, appointed by the President;

(5) one Governor appointed by the President;

(6) one mayor appointed by the President;

(7) the President of the National Conference of State Historic Preservation Officers;

(8) the Chairman of the National Trust for Historic Preservation;

(9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archeology, and other appropriate disciplines; and,

(10) three at-large members from the general public, appointed by the President.

Designees

(b) Each member of the Council specified in paragraphs (2) through (8) (other than (5) and (6)) may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated.

Term of office

(c) Each member of the Council appointed under paragraph (1), and under paragraphs (9) and (10) of subsection (a) shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of four years. An appointed member whose term has expired shall serve until that member's successor has been appointed.

Vacancies

(d) A vacancy in the Council shall not affect its powers, but shall be filled not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this Act as in effect on the day before the enactment of the National Historic Preservation Act Amendments of 1980 shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after the enactment of the National Historic Preservation Act Amendments of 1980.

Vice Chairman

(e) The President shall designate a Vice Chairman, from the members appointed under paragraphs (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

Quorum

(f) Nine members of the Council shall constitute a quorum.

Section 202 *(16 U.S.C. 470j)*

Duties of Council

(a) The Council shall—

(1) advise the President and the Congress on matters relating to historic preservation, recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;

(2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this Act; and,

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

Annual and special reports

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act.

Section 203 *(16 U.S.C. 470k)*

Information from agencies

The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of this title; and each such department or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

Section 204 *(16 U.S.C. 470l)*

Compensation of members

The members of the Council specified in paragraphs (2), (3), and (4) of section 201(a) shall serve without additional compensation. The other members of the Council shall receive $100 per diem when engaged in the performances of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

Section 205 *(16 U.S.C. 470m)*

Executive Director

(a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

General Counsel and attorneys

(b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

Appointment and compensation of staff

(c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5, United States Code: *Provided, however*, That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of Title 5, United States Code.

Appointment and compensation of additional personnel

(d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949.

Consultants

(e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5, United States Code.

Financial and administrative services

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior; *Provided*, That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 46e) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 665(g)) shall apply to appropriations of the Council. *And provided further*, That the Council shall not be required to prescribe such regulations.

Provision of assistance by members

(g) The members of the Council specified in paragraphs (2) through (4) of section 201(a) shall provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the members, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act.

Section 206 *(16 U.S.C. 470n)*

International Centre for the Study of the Preservation and Restoration of Cultural Property; authorization

(a) The participation of the United States as a member of the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

Members of official delegation

(b) The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.

Authorization for membership payment

(c) For the purposes of this section there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982: *Provided*, That no appropriation is authorized and no payment shall be made to the Centre in excess of 25 per centum of the total annual assessment of such organization. Authorization for payment of such assessment shall begin in fiscal year 1981, but shall include earlier costs.

Section 207 *(16 U.S.C. 470o)*

Transfer of funds

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programmed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department to the Council within 60 days of the effective date of this Act.

Section 208 *(16 U.S.C. 470p)*

Rights of Council employees

Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all rights, benefits, and privileges pertaining thereto held prior to such transfer.

Section 209 *(16 U.S.C. 470q)*

Exemption from Federal Advisory Committee Act

The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of the Administrative Procedure Act (80 Stat. 381) shall govern the operations of the Council.

Section 210 *(16 U.S.C. 470r)*

Submission to the Congress

No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

Section 211 *(16 U.S.C. 470s)*

Regulations for Section 106; local government participation

The Council is authorized to promulgate such rules and regulations it deems necessary to govern the implementation of section 106 of this Act. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 106 which affect such local governments.

Section 212 *(16 U.S.C. 470t)*

Council appropriation authorization

(a) The Council shall submit its budget annually as a related agency of the Department of the Interior. To carry out the provisions of this title, there are authorized to be appropriated not more than $1,500,000 in fiscal year 1977, $1,750,000 in fiscal year 1978, and $2,000,000 in fiscal year 1979. There are authorized to be appropriated not to exceed $2,250,000 in fiscal year 1980, $2,500,000 in fiscal year 1981, $2,500,000 in fiscal year 1982, and $2,500,000 in fiscal year 1983.

Concurrent submission of budget to Congress

(b) Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources.

Section 213 *(16 U.S.C. 470u)*

Reports from Secretary at request of Council

To assist the Council in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

Section 214 *(16 U.S.C. 470v)*

Exemptions for Federal activities from provisions of the Act

The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.

Section 301 *(16 U.S.C. 470w)*

Definitions

As used in this Act, the term—

(1) "Agency" means agency as such term is defined in section 551 of title 5, United States Code, except that in the case of any Federal program exempted under section 214, the agency administering such program shall not be treated as an agency with respect to such program.

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

(3) "Local government" means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.

(4) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior for which the United States holds land in trust or restricted status for the entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1701 et seq.).

(5) "Historic property" or "historic resource" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register; such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object.

(6) "National Register" or "Register" means the National Register of Historic Places established under section 101.

(7) "Undertaking" means any action as described in section 106.

(8) "Preservation" or "historic preservation" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance and reconstruction, or any combination of the foregoing activities.

(9) "Cultural park" means a definable urban area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.

(10) "Historic conservation district" means an urban area of one or more neighborhoods and which contains (A) historic properties, (B) buildings having similar or related architectural characteristics, (C) cultural cohesiveness, or (D) any combination of the foregoing.

(11) "Secretary" means the Secretary of the Interior except where otherwise specified.

(12) "State Historic Preservation Review Board" means a board, council, commission, or other similar collegial body established as provided in section 101(b)(1)(B)—

(A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law),

(B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archeology, architectural history, and architecture, and

(C) which has the authority to—

(i) review National Register nominations and appeals from nominations;

(ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;

(iii) provide general advice and guidance to the State Historic Preservation Officer, and

(iv) perform such other duties as may be appropriate.

(13) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B), and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among—

(A) professionals in the disciplines of architecture, history, architectural history, planning, archeology, or related disciplines, to the extent such professionals are available in the community concerned, and

(B) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission.

Section 302 *(16 U.S.C. 470w-1)*

Authority to expend funds for purposes of this Act

Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this Act, except to the extent appropriations legislation expressly provides otherwise.

Section 303 *(16 U.S.C. 470w-2)*

Donations to Secretary; money and personal property

(a) The Secretary is authorized to accept donations and bequests of money and personal property for the purposes of this Act and shall hold, use, expend, and administer the same for such purposes.

Donations of less than fee interests in real property

(b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic property where the acceptance of such interests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this Act shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

Section 304 *(16 U.S.C. 470w-3)*

Confidentiality of the location of sensitive historic resources

The head of any Federal agency, after consultation with the Secretary, shall withhold from disclosure to the public, information relating to the location or character of historic resources whenever the head of the agency or the Secretary determines that the disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located.

Section 305 *(16 U.S.C. 470w-4)*

Attorneys' fees

In any civil action brought in any United States district court by any interested person to enforce the provisions of this Act, if such person substantially prevails in such action, the court may award attorneys' fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable.

National Center for the Building Arts

(a) In order to provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building which exemplifies the great achievements of the building arts in the United States, the Secretary and the Administrator of the General Services Administration are authorized and directed to enter into a cooperative agreement with the Committee for a National Museum of the Building Arts, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor, for the operation of a National Museum for the Building Arts in the Federal Building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. Such museum shall—

(1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research relating to the building arts;

(2) foster educational programs relating to the history, practice and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;

(3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;

(4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and

(5) encourage contributions to the building arts.

Cooperative agreement

(b) The cooperative agreement referred to in subsection (a) shall include provisions which—

(1) make the site available to the Committee referred to in subsection (a) without charge;

(2) provide, subject to available appropriations, such maintenance, security, information, janitorial and other services as may be necessary to assure the preservation and operation of the site; and

(3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this Act.

Grants to Committee

(c) The Secretary is authorized and directed to provide matching grants-in-aid to the Committee referred to in subsection (a) for its programs related to historic preservation. The Committee shall match such grants-in-aid in a manner and with such funds and services as shall be satisfactory to the Secretary, except that no more than $500,000 may be provided to the Committee in any one fiscal year.

Site renovation

(d) The renovation of the site shall be carried out by the Administrator with the advice of the Secretary. Such renovation shall, as far as practicable—

(1) be commenced immediately,

(2) preserve, enhance, and restore the distinctive and historically authentic architectural character of the site consistent with the needs of a national museum of the building arts and other compatible use, and

(3) retain the availability of the central court of the building, or portions thereof, for appropriate public activities.

Annual report

(e) The Committee shall submit an annual report to the Secretary and the Administrator concerning its activities under this section and shall provide the Secretary and the Administrator with such other information as the Secretary may, from time to time, deem necessary or advisable.

Definition of "building arts"

(f) For purposes of this section, the term "building arts" includes, but shall not be limited to, all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades and crafts.

Section 307 *(16 U.S.C. 470w-6)*

Transmittal of regulations to Congressional committees

(a) At least thirty days prior to publishing in the Federal Register any proposed regulation required by this Act, the Secretary shall transmit a copy of the regulation to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Secretary also shall transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in subsection (b) of this section, no final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

Emergency regulations

(b) In the case of an emergency, a final regulation of the Secretary may become effective without regard to the last sentence of subsection (a) if the Secretary notified in writing the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

Disapproval by Congress

(c) Except as provided in subsection (b), the regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of _____, which regulation was transmitted to Congress on _____," the blank spaces therein being appropriately filled.

Inaction by Congress

(d) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

Definitions

(e) For the purposes of this section—

(1) continuity of session is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

Effect of Congressional inaction

(f) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation.

*U. S. GOVERNMENT PRINTING OFFICE 1986; 624-351/7

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MAR 16 1995		Ret'd MAR 25 '97	
		APR 20 1997	
		Ret'd. APR 09 '97	
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